



**OFFICE OF THE SECRETARY OF TRANSPORTATION (OST)  
OFFICE OF THE ASSISTANT SECRETARY FOR ADMINISTRATION (M)**

**Office of the Senior Procurement Executive (OSPE)**

# **FINANCIAL ASSISTANCE GUIDANCE MANUAL (FAGM)**

**March 2009**

# Preface

## *Purpose*

This document provides procedural guidance to be followed in the award and monitoring of financial assistance awarded by the United States Department of Transportation (DOT) with the objective of setting a standardized process for grant processing and management. For the purpose of this manual, financial assistance means the forms of assistance that provide funds to eligible recipients, e.g., grants, cooperative agreements, and assistance-type other transactions. Included in the manual are policies, guidelines, and instructions for performing specific activities associated with all stages of the financial assistance or grants management process. Though this document is providing guidelines for the assistance process, the Financial Management guidelines covers a broad overview of DOT requirements, individual Operating Administrations (OA's) administrative requirements can be obtained from the financial management guidelines website of the various OA's (see appendix A for the OA's website links).

## *Applicability*

This manual is applicable to DOT financial assistance agreements, unless noted otherwise in the award instrument. **This manual does not apply to DOT contracts.**

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# **Chapter 1**

## **Assistance Process Overview**

## A. Background of Types of Assistance

This section discusses background in the Assistance Processes. In Chapter 2, Section A, details of each type of assistance process are described.

Prior to the passage of the Federal Grant and Cooperative Agreement Act of 1977, Federal agencies were often using grants and procurement contracts interchangeably and without consistency in considering the type of relationship being established. Through the Act, Congress defines the appropriate situations for the use of each instrument.

Section 6301 of 31 U.S.C. <http://uscode.house.gov/download/pls/31C63.txt> provides guidelines that agencies are required to use in selecting among contracts, grants or cooperative agreements. The intent is to prescribe uniform criteria to assist agencies in distinguishing differences between the legal instruments based on the Federal purpose in the relationship. It does not convey new authority to make assistance awards independent of agency program legislation.

A grant is used when the principal purpose is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by law, and substantial involvement is *not expected* between the executive agency and the recipient when carrying out the activity contemplated.

A Cooperative Agreements is used when the principal purpose is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by law, and substantial involvement *is expected* between the executive agency and the recipient when carrying out the activity contemplated. **The term assistance agreement is used interchangeably throughout this manual to refer to grants, cooperative agreements, loans and other transactions.**

Often, funds are provided for direct departmental use, which in turn can be provided to a third party. The choice of instruments in this type of transaction depends solely on the purpose of the transaction. If the intent of the funds are to assist the grantee to carry out its functions, a grant or cooperative agreement is appropriate.

The Department of Transportation's assistance agreements programs have various funding types:

### 1. Competitive (Discretionary)

A discretionary grant awards funds on the basis of a competitive process. DOT reviews applications, in part through a formal review process, in light of the legislative and regulatory requirements and published selection criteria established for a program. The review process gives DOT the discretion to determine which applications best address the program requirements and are, therefore, most worthy of funding.

### 2. Formula

Formula grant programs are noncompetitive awards based on a predetermined formula. These programs are sometimes referred to as state-administered programs.

### **3. Loans**

DOT provides loans and credit assistance to eligible applicants, which include state departments of transportation, transit operators, special authorities, local governments and private entities.

### **4. Earmarks, Non-Competitive (Sole Source)**

OMB defines earmarks as funds provided by the Congress for projects or programs where the congressional direction (in bill or report language) circumvents Executive Branch merit-based or competitive allocation processes, or specifies the location or recipient, or otherwise curtails the ability of the Executive Branch to manage critical aspects of the funds allocation process.

### **5. Other Transactions**

Other transactions are financial assistance or alternative procurement instruments specifically authorized by Congress that are not contracts, grants or cooperative agreements.

## **B. Overview of the Federal Formula Grant Process**

Congress appropriates DOT funds and authorizes the department to distribute funds in the apportionate or statutory formulas. Apportionments or statutory formulas for certain programs are determined by legislative processes and the procedures for the formula funds are as follows:

- Receives legislation which determines how the funds are to be calculated.
- Review of the legislative language.
- Determine the appropriate assistance instrument.
- Contact potential grantee entity concerning submission of proposal.
- Conduct negotiations with grantee concerning proposal.
- Awarding of grant funds.

## **C. Overview of the Discretionary Grant Process**

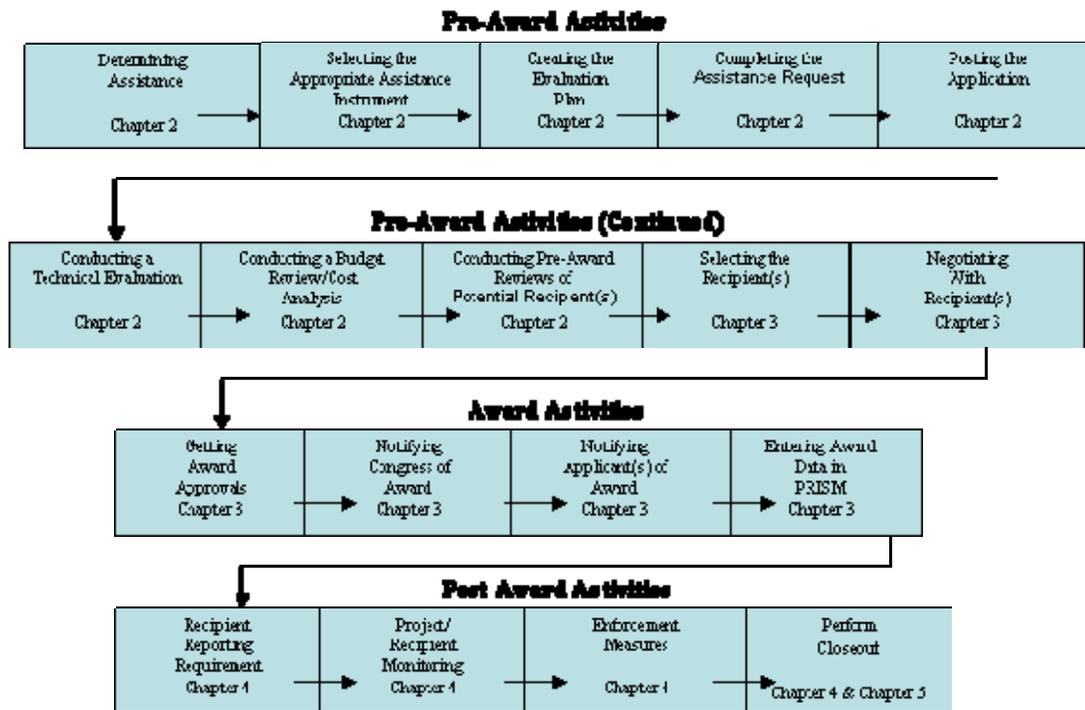
The assistance funding process within DOT, from beginning to end, generally works as follows, although the order may vary somewhat:

- A program office within DOT determines that an assistance award is necessary.
- The program office submits a Purchase Request (PR) or Request form to the assistance agreement office.
- The program office and assistance agreements office determine how applications received will be evaluated.

- If assistance award is necessary, the agency advertises the availability of funds via Grants.gov, the Federal Register, or other appropriate means.
- Prospective recipients apply for an assistance award.
- The program office and assistance agreements office receive, screen, and evaluate the applications.
- Applications are selected for funding, negotiations are conducted if necessary, and awards are made.
- The grantee conducts the approved project, and a program specialist or manager monitors the award.
- If sub-awards are necessary, the advertising, evaluation, award, and monitoring process is repeated by the grantee entity.
- The program office closes out the project at the end of the project period.

## D. Key Steps in the Discretionary Grants Process

The flow chart below provides an overview of the key steps in the discretionary grants process. Under each step are references to the sections of the Manual that cover these steps. Each step is discussed in further detail in the appropriate chapter.



## F. Overview of the Loan Process

DOT has four loan programs. The programs are managed under the Federal Railroad Administration (FRA), Federal Highway Administration (FHWA), Maritime Administration (MARAD) and Small and Disadvantaged Business Utilization (OSDBU) Office within OST. Though each program may have different goals and objectives, a

detailed financial review of the awardee is a requirement. Below are the general processes involved in implementing the loan programs.

- The DOT accepts the application and conducts an initial evaluation of the proposal.
- The application is then given to a reviewer to do a detailed evaluation.
- After the reviewer evaluates the successful application is returned to DOT and DOT does an additional analysis of the entire evaluation package.
  - (1) The agency examines the previous five years of financial history of the applicant.
  - (2) Also, looks at operating data.
  - (3) May do interviews with the potential awardee.
  - (4) Looks at potential awardee collateral.
  - (5) May look at trends with five year projections.
- The evaluation package is set for approval by the credit council.
- Once approved by the credit council, the package is given to Office of Management and Budget (OMB).
- OMB reviews the package.
- If approved, OMB then gives DOT the authority to lend to the borrower.
- After authorization is given, DOT gives an offer sheet to the awardee.

## G. Regulations that Govern by Types of Recipients

- a. The governing OMB Circulars applicable to specific types of grantees are as follows:

RECIPIENT TYPE	MUST COMPLY WITH:
<p><b>State, Local, or Indian Tribal Government</b></p>	<p>OMB Circular A-102, Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments  <a href="http://www.whitehouse.gov/omb/grants/attach.html">http://www.whitehouse.gov/omb/grants/attach.html</a></p> <p>2 CFR Part 225 (OMB Circular A-87), Cost Principles for State, Local and Indian Tribal Governments  <a href="http://www.whitehouse.gov/omb/circulars/index.html">http://www.whitehouse.gov/omb/circulars/index.html</a></p> <p>OMB Circular A-133, Audits of States, Local Governments, and Nonprofit Organizations  <a href="http://www.whitehouse.gov/omb/circulars/index.html">http://www.whitehouse.gov/omb/circulars/index.html</a></p>
<p><b>Non-Profit Organization</b></p>	<p>2 CFR Part 215, (OMB Circular A-110) Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations <a href="http://www.whitehouse.gov/omb/circulars/index.html">http://www.whitehouse.gov/omb/circulars/index.html</a></p> <p>2 CFR Part 230 (OMB Circular A-122), Cost Principles for Non-Profit Organizations  <a href="http://www.whitehouse.gov/omb/circulars/index.html">http://www.whitehouse.gov/omb/circulars/index.html</a></p> <p>OMB Circular A-133, Audits of States, Local Governments, and Nonprofit Organizations  <a href="http://www.whitehouse.gov/omb/circulars/index.html">http://www.whitehouse.gov/omb/circulars/index.html</a></p>
<p><b>Educational Institution</b></p>	<p>2 CFR Part 215, (OMB Circular A-110) Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations <a href="http://www.whitehouse.gov/omb/circulars/index.html">http://www.whitehouse.gov/omb/circulars/index.html</a></p> <p>2 CFR Part 220 (OMB Circular A-21), Cost Principles for Educational Institutions  <a href="http://www.whitehouse.gov/omb/circulars/index.html">http://www.whitehouse.gov/omb/circulars/index.html</a></p> <p>OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations <a href="http://www.whitehouse.gov/omb/circulars/index.html">http://www.whitehouse.gov/omb/circulars/index.html</a></p>
<p><b>Hospital</b></p>	<p>2 CFR Part 215, Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations <a href="http://www.whitehouse.gov/omb/circulars/index.html">http://www.whitehouse.gov/omb/circulars/index.html</a></p> <p>45 CFR Part 74, Appendix E, Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals, or other cost principles designated by the awarding agency.</p> <p>OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations  <a href="http://www.whitehouse.gov/omb/circulars/index.html">http://www.whitehouse.gov/omb/circulars/index.html</a></p>

## Assistance Award Program Guidance Chart (con't)

<b>Commercial Organization or Profit Making Organization</b>	2 CFR Part 215, Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (if included in agency implementation)  Federal Acquisition Regulation (FAR) 31.2, Contracts with Commercial Organizations  Note: Commercial organizations generally are not subject to the audit requirements affecting other recipient types. The most common audit requirement for profit making recipients is to have an audit that meets A-133 requirements or a financial audit under the Government Auditing Standards. See 45 CFR Parts § 74.26 (d) (2).)
<b>IF THIS TYPE OF ORGANIZATION RECEIVES A SUBAWARD FROM ANY RECIPIENT TYPE:</b>	<b>THEN THESE REQUIREMENTS APPLY:</b>
<b>Colleges or Universities</b>	Agency uses 2 CFR Part 215 and 2 CFR Part 220 (OMB Circular A-21)
<b>Non-Profit Organizations</b>	Agency uses 2 CFR Part 215 and 2 CFR Part 230 (OMB Circular A-122)
<b>Hospital</b>	Agency uses 2 CFR Part 215 and the cost principles used by the awarding agency, usually 45 CFR Part 74, Appendix E
<b>State, Local, or Indian Tribal Government</b>	Agency uses A-102 and 2 CFR Part 225 (OMB Circular A-87)

### b. Applicability to Sub-recipients

Grantees are responsible for assuring that costs of all sub-awards under DOT assistance agreements are subject to those cost principles and procedures appropriate to the sub-award type and organization involved. For example, if the sub-award is a cost reimbursement type with a commercial concern, FAR Subpart 31.2 would apply. If sub-awardee is a non-profit then 2 CFR 230 (OMB Circular A-122) would apply. (See Chapter 9 for additional Cost Principles details)

### c. Conflicting Guidelines

In the event of any discrepancy between the summary information contained in this chapter and any specific provision of the applicable Federal cost principles, the cost principles in effect as of the effective date of the DOT grant will govern. In the case of a discrepancy between the special provisions of a DOT grant and the standards of the applicable cost principles, the special provisions of the grant will govern.

# **Chapter 2**

## **Award Types**

## A. Types of Assistance

An **assistance agreement** is the legal instrument used to reflect a relationship between the federal government and a State, local government, or other recipient when the principal purpose is the transfer of money, property, or anything of value to the other party to the agreement to assist in accomplishing a public purpose of support or stimulation authorized by a federal law.

Assistance agreements can vary depending on the type of legislative authority, type of awardees, and type of program. The following discusses, in detail, the difference in assistance and the characteristics of the agreement.

The primary goal of assistance agreements is to further a public purpose. They are normally cost-reimbursable agreements and the only permissible charges are actual costs (which should generally be paid in advance) that are directly related to the project and indirect costs based on an agreed-upon rate. These agreements do not include deliverables but may require other submissions or objectives described in the award document.

An assistance agreement may be used in situations such as the following:

- awards to universities to support research studies in subject areas consistent with the awarding agency's mission;
- awards to state and local governments for construction of public works projects or to assist in projects of common interest;
- fellowships to students for advanced study or research;
- awards to universities for curriculum development to improve the quality of education in subject areas relevant to the awarding agency's mission; and
- awards to eligible recipients to provide financial support for conferences which have a public benefit but from which the awarding agency does not derive a direct benefit. This does not include conferences to train federal employees or meetings to obtain advice of non-federal experts, such as federal advisory committee meetings.

Three factors affect the decision to award an assistance agreement. The three factors are:

- 1. Legislative or statutory authority:** Federal agencies must be authorized by statute to stimulate or support an activity. This statutory authority from Congress must exist either in broad legislation or in a program-specific statute. Without statutory or legislative authority, an OA may not use an assistance instrument.
- 2. Principal purpose:** If the principle (predominant) purpose of a project is to support or stimulate a public purpose, a grant or cooperative agreement is appropriate when there is also statutory authority for the agency to provide that support or stimulation.
- 3. Degree of Federal Government involvement:** The issue of "substantial involvement" is the basis for the distinction between a grant and a cooperative agreement. If substantial involvement by the Government is anticipated, a cooperative agreement may be used. If substantial involvement by the Government is not anticipated, use a grant. When substantial involvement is not

anticipated (grant), the recipient can expect to run the project without agency participation or collaboration but with Government oversight.

The following discussion illustrates this distinction.

(1) **Grant.** Involvement considered appropriate for a grant includes:

- (a) Approval of recipient plans prior to award;
- (b) General administrative requirements, such as those included in 2 CFR Part 215 (OMB Circular A-110) and 49 CFR Part 18;
- (c) Site visits, performance reporting, financial reporting and audits to ensure that the objectives, terms and conditions of the grant are met;
- (d) Correction of deficiencies in project or financial performance under the terms of the grant;
- (e) General statutory requirements understood in advance of the award such as civil rights, environmental protection and provisions for the disabled individuals or individuals with a disability;
- (f) Review of performance after completion; and
- (g) OA technical assistance or guidance provided (1) at the request of the recipient, or (2) without the requirement for the recipient to follow or (3) as a requirement for the recipient to follow but understood as a term or condition of the award.

(2) **Cooperative Agreement.** In addition to the involvement discussed above for grants, examples of substantial involvement indicating a cooperative agreement include:

- (a) OA and recipient collaboration in the performance of the assisted activities;
- (b) Close OA monitoring or operational involvement during performance over and above normal exercise of Federal responsibilities to ensure compliance with general statutory and regulatory requirements; and
- (c) Significant OA involvement in recipient decisions with respect to scope of services offered, organizational structure, staffing, mode of operation, and other management processes.

Grants and cooperative agreements with universities, hospitals, and other nonprofit organizations will be awarded and administered in accordance with 2 CFR Part 215 (OMB Circular A-110) and 49 CFR Part 19.

Grants and cooperative agreements with not-for-profit organizations will be awarded and administered in accordance with applicable program procedures. The use of 49 CFR Part 19 is encouraged.

DOT provides other types of assistance mechanisms in the form of Loans and “Other Transactions.”

(1) **Loans** -- DOT may provide three forms of credit assistance – (1) secured (direct) loans, (2) loan guarantees, and (3) a stand-by lines of credit. The program's fundamental goal is to leverage Federal funds by attracting substantial private and other non-Federal co-investment in critical improvements to the nation's surface transportation system. The DOT awards credit assistance to eligible applicants, which include state departments of transportation, transit operators, special authorities, local governments, and private entities. For an overview of loan procedures see page 10.

(2) **Other Transactions** – “Other Transactions” are financial assistance or alternative assistance instruments specifically authorized by Congress that are not grants or cooperative agreements. They are designed to allow government and educational entities, non-profit organizations and private industry to freely transfer funds, materials and technical assistance among themselves for the mutual benefit of all participants. Programs with “Other Transaction” authority are not required to use most financial assistance provisions or Federal Acquisition Regulation clauses, but are free to negotiate provisions that are mutually acceptable to all affected parties. Refer to Chapter 10 under Administrative Requirements for “Other Transactions” for further details.

## **B. Terms and Conditions (Grant Award Provisions)**

Normally, when a grant is awarded, awardees are given guidelines and legislative references they must utilize to ensure that the requirements of the grant are met.

## **C. DOT Grant Periods**

### **1. Definitions**

- a. The effective date of a grant is the date specified in the grant award on or after, which, expenditures may be charged to the grant. If no effective date is specified, then the date of the grant notice is the effective date.
- b. The expiration date of a grant is the date specified in the grant notice after which expenditures may not be charged against the grant except to satisfy obligations to pay allowable project/program costs committed on or before the grant end date.
- c. The grant period is the period of time between the effective date and the expiration date.

### **2. Significance of Grant Period**

- a. A DOT grant gives authority to the grantee to commit and expend funds for allowable costs in support of the project up to the grant amount specified in the grant notice and any time during the grant period.
- b. Except for grants that have prior authorization for pre-award costs, pre-award expenditures may not be charged against the grant.

### **3. Changes in Grant Periods**

- a. Effective Date – Once the award is made, the effective date cannot be changed; however, awardees can request authorization of pre-award costs.
- b. Expiration Date – The expiration date may be changed as a result of approval of a request for continued support of a continuing grant, for a no-cost grant extension or by approval of a request for supplemental support. If approved, a DOT Contracting and/or Program Officer will issue an amendment to the grant.
- c. No-Cost Extension – If a grant extension is needed, grantees should submit a request in writing before the grant expiration date to the DOT point of contact or Program Officer.

## **D. Additional Funding Support**

- 1. Types of Additional Funding Support --** Additional funding of a project beyond the original grant period may be provided in the form of renewed support, continued support or supplemental support.
- 2. Renewed Support (Standard Assistance Agreements) --** Renewed support is defined as additional funding for a support period subsequent to that provided by a standard grant. Renewals to standard assistance agreements, if any, will be in the form of a new grant with a new grant number. Costs incurred under the previous grant cannot be transferred to the new grant. Residual funds remaining in the previous grant cannot be transferred to the new grant.
- 3. Continued Support (Continuing Assistance Agreements)**
  - a. Funding increments for projects being supported under continuing assistance agreements normally are not considered in competition with proposals for new assistance agreements or for renewed support of standard assistance agreements.
  - b. Unless otherwise provided for in the original grant notice, each increment of a continuing grant will be funded at the level indicated in the original award notice without the need for a formal request, subject to DOT's judgment of satisfactory progress, availability of funds, and receipt and approval of the required annual report. DOT makes every attempt to honor continuing grant commitments. In order to adjust for changes in the general level of funds for a particular field of science or engineering or to adjust for major new opportunities in that field, DOT may reduce continuing grant increments below the levels indicated in original grant notices. This requires full written justification by program staff and management review and approval. In the absence of major unanticipated fiscal year constraints, reductions are rare. Continuing grant increments will be released by the cognizant DOT Program Officer upon approval of the annual report.
  - c. In order to obtain a committed funding increment and ensure continuity of funding, an annual project report must be satisfactorily submitted.
- 4. Supplemental Support**
  - a. In unusual circumstances, small amounts of supplemental funding and support may be requested to assure adequate completion of the original

scope of work. Such requests for supplemental funding support should be submitted to the cognizant DOT Program Officer.

- b. If approved, the DOT Contracts and/or Program Officer will amend the grant to provide additional funding for the current support period. The amendment notice will specify both the amount of supplemental funding and the cumulative amount awarded through the expiration date. The expiration date will normally remain unchanged.

**Chapter 3**  
**Pre-Award Procedures**  
**(Before the Request for Application)**

## **A. Assistance Planning**

When a DOT program office determines that it needs to make an assistance award in order to fulfill its responsibilities under its mission or a specific piece of legislation, it should initiate the following process to properly plan and execute the award in accordance with appropriate laws and regulations.

The award planning stages described below should be initiated by the responsible program office. Many steps in this process may be completed simultaneously, in coordination with the responsible program office.

### **1. Determining Assistance**

The program office determines the type of assistance award based on legislation. There are various assistance mechanisms for DOT grants, cooperative agreements, loans and other transactions. Chapter 2, Section A, describes the types of assistance vehicles available.

### **2. Identifying the Legislative Citation**

In the beginning phase of a potential competition, the program office technical representative should be prepared to present a legal citation documenting the authority for the proposed award. The citation should be specific to the proposed competition or award.

#### *Example*

*(T)he Secretary of Transportation shall make grants to States and Indian tribes to train public sector employees to respond to accidents and incidents involving hazardous material. (49 USC 5116(b) (1).)*

#### *Example*

*[T]he Secretary shall make the following grants under this section:*

*(A) Group A.—The Secretary shall make a grant in the amount of \$1,000,000 to each of the institutions or groups of institutions in group A.*

*(B) Groups B and C.—The Secretary shall make a grant in the amount of \$1,000,000 to 10 of the institutions or groups of institutions in groups B and C that received grants under this section in ...*

*(C) Group D.—The Secretary shall make a grant in the amount of \$2,000,000 to each of the institutions or groups of institutions in group D.*

*49 USC§5505(i)(3).*

If the legislative authority cites only one instrument type, such as a grant, then a grant must be the instrument used. However, if multiple options are authorized, the definitions for the various assistance arrangements provided in Chapter 2 should be used to determine the appropriate assistance agreement. In some cases, awards which are referenced in Congressional Conference Reports may be treated as earmark. In earmark situations, agency personnel shall consult with the Office of Chief Counsel for the OA before determining the appropriate assistance award.

### **3. Determining the Required Cost Share**

If cost sharing is required, it will be mentioned in either the program authorizing legislation or the appropriations legislation. It may be called “cost sharing” or “matching.” Examples of such language appear below:

*Example*

*...the Secretary shall select each recipient of a grant under this section through a competitive process on the basis of the following:*

\*\*\*\*\*

*(E) The recipient's demonstrated commitment of at least \$200,000 in regularly budgeted institutional amounts each year to support ongoing transportation research and education programs. 49 USC §5505(c).*

*Example*

*Federal Share.—The Federal share of the costs of activities carried out using a grant made under this section is 50 percent of costs. The non-Federal share may include funds provided to a recipient under section 503, 504(b), or 505 of title 23, United States Code. 49 USC §5505(f).*

In certain cases, consultation with Office of Chief Counsel for the OA may be required to determine proper application of cost-sharing requirements. When in doubt, consult with legal counsel.).

**4. Determining the Extent of Competition and Whether Noncompetitive awards Must Be Advertised (Sole Source)**

A justification shall be prepared when competition is not sought, unless the award has been congressionally directed or is made to State or local government. The justification shall include the basis for not competing the award and a rationale for selecting the grantee. Justifications must be approved by the OA's Administrator or Secretarial Officer or a designee. Suggested guidelines for noncompetitive awards are provided at 49 CFR 18.36.

[http://edocket.access.gpo.gov/cfr\\_2007/octqtr/49cfr18.36.htm](http://edocket.access.gpo.gov/cfr_2007/octqtr/49cfr18.36.htm)

As required by Section 316 of the Federal Property and Administrative Services Act of 1949, as amended, 41 USC 266, new awards for research, development, test or evaluation must be based on merit-based selection procedures. This section provides that a provision of law may not be construed as requiring a new grant to be awarded to a specified non-Federal government entity unless that provision of law specifically refers to Section 316, identifies the specific entity involved, and states that the award is required by law in contravention of the policy set forth in Section 316.

The Federal Grant and Cooperative Agreement Act of 1997 encourages competition in awarding grants or cooperative agreements whenever practicable. Competition must be conducted to select an assistance recipient, other than a State or local government, except when a sole source is statutorily authorized or meets the criteria listed below:

- Unsolicited proposal that contains a unique or innovative idea, method, or approach which is not the subject of a current or planned contract or assistance award;
- Continuation of a presently funded activity, where competition would adversely affect the continuation or completion of the activity;
- Legislative intent, evidenced by the legislative language or legislative history, that directs the award to a specific recipient or specifies objectives obtainable by only one recipient; or
- Unique capability or expertise based upon a unique capability to perform the activity successfully, based upon unique equipment, proprietary data, technical expertise, location or other such unique qualifications.

## **5. Documenting the Justification for Other-than-Full-and-Open Competition**

Congressionally directed awards to a single source or awards to State or local governments may be documented via a memo to the file indicating the source of the Congressional direction.

Whenever an award is made, without competition (except for congressionally directed awards meeting Section 316), a justification for-other-than-full-and-open-competition (JOTFOC) must be prepared and submitted with the Assistance Request (AR). The JOFOD must list:

- Why competition is not practicable;
- Which criteria under Paragraph 4 above justifies the non-competitive (sole source) award, and why;
- Program legislation (Authority for the Award);
- Relevant legislative history;
- Capabilities of the proposed recipient; and
- Cost sharing offered by the recipient, if applicable.

DOT uses the FAR as a guide in determining the approval levels for sole source justifications. A JOTFOC must be approved according to the levels listed in FAR 6.304. Project amounts include both the Federal and non-federal share.

## **6. Identifying the Appropriate CFDA Number**

The Catalog of Federal Domestic Assistance (CFDA) is a comprehensive listing of all Federal assistance programs and provides information on program history, eligibility requirements, funding levels, application procedures, and Federal program points of contact. OMB Circular A-89 requires Federal agencies to list all Federal assistance programs in the CFDA. The Circular describes the information to be provided about each program and requires the agency to periodically update the information in the catalog.

Additional CFDA numbers maybe established as needed to properly categorize assistance awards. Any new programs established under a new CFDA number must be coordinated with the Office of the Senior Procurement Executive (OSPE).

Though DOT may utilize and develop new CFDA numbers, the chart below provides a synopsis of what is available to date.

Each new DOT assistance program requires a CFDA number.

All DOT CFDA numbers consist of 5 digits, beginning with 20.---. Each DOT OA normally has its own series of last 3 digits.

	<b>Operating Administration</b>	<b>CFDA Numbers</b>
1	FAA	20.100-199
2	FHWA	20.200-216; 20.218-229; 20.240-299
3	FMCSA	20.217; 20.218; 20.230-239
4	FRA	20.300-399
5	FTA	20.500-599
6	NHTSA	20.600-699
7	RITA	20.700-799; 20.920
8	PHMSA	20.720-750
9	RITA	20.760-790
10	MARAD	20.800-899
11	OSDBU	20.901-910
12	Rest of OST	20.900; 20.930-999

Numbers cannot be re-used. Check with the CFDA website to get an historical listing of DOT CFDA numbers.

Numbers are assigned by the CFDA POC (staffer from the Financial Assistance Management Division) upon request from an OA. The OA must complete a new program summary before they can obtain a number. Contact the Office of Financial Assistance Management through [ellen.shields@dot.gov](mailto:ellen.shields@dot.gov) to obtain a new CFDA number

Once a number is given, GSA mandates that the number remains with the program, even if the program migrates to a new OA. In the case of RSPA, all existing RSPA programs have retained their existing numbers before the agency was divided in PHMSA and RITA. New PHMSA programs have been assigned numbers 720-750; new RITA programs have been assigned numbers 760-790.

## **7. Selecting the Appropriate Instrument**

A grant is an assistance agreement that does not involve substantial programmatic involvement on the part of the Federal awarding agency; a cooperative agreement does involve substantial programmatic involvement by the awarding agency. Apart from that one distinction, the instruments are identical. Both types of agreements are subject to the same regulations and administrative requirements and must be monitored to ensure DOT funds are properly used.

## **8. Selection of a Cooperative Agreement**

It is important to remember that a cooperative agreement should not be awarded for the purpose of exercising additional control over the recipient. A cooperative agreement should only be used because of the necessity of agency *programmatic* involvement in the project.

Monitoring activities may be appropriate for either a grant or cooperative agreement but are not an appropriate reason to justify the choice of a cooperative agreement. Appropriate monitoring activities include: as the award instrument include:

- Approval of recipient plans prior to award;
- General administrative requirements, such as those included in 49 CFR Parts 18 and 19;

- Site visits, performance reporting, financial reporting, and audits to ensure that the objectives, terms, and conditions of the grant are met;
- Correction of deficiencies in project or financial performance under the terms of the grant;
- General statutory requirements understood in advance of the award such as civil rights, environmental protection, and provisions for the handicapped;
- Review of performance after completion; and

When substantial involvement is described in the Request for Applications (RFA), it should be specific to the activities funded under the program, not a generic description of agency monitoring activities.

## **9. Determining Audits**

Generally, each OA and secretarial office (SO) shall require recipients to have audits conducted in compliance with the provisions of OMB Circular A-133. OAs and SOs are also responsible for ensuring appropriate audit coverage for other types of assistance recipients not covered by these Circulars. Where DOT has been designated to serve as the cognizant agency for grantee, the audit responsibilities shall be divided between the OAs and SOs, and the Office of Inspector General (OIG).

Recipients that expend \$500,000 or more in any year in Federal funds shall have a single audit conducted in accordance with OMB Circular A-133. When the OAs, SOs or the OIG determine that additional audits are necessary, such audits shall build on the results of independent auditors if the audits meet the criteria contained in OMB Circular A-133. Recipients that expend less than \$500,000 a year in Federal assistance funds are exempt from single audit requirements; however, they must retain appropriate records to document their compliance with the requirements of their Federal assistance awards. For Audit details see Chapter 7.

When a single audit is not required, the following can be used to determine recipient compliance with Federal requirements:

1. Recipient obtained audits made in accordance with Government Auditing Standards (GAS) issued by the Government Accountability Office (GAO).
2. Previous audits of recipient operations.
3. Desk reviews by Federal program officials of project documentation.
4. Federal/non-Federal audits obtained by recipients.
5. Evaluation of recipient operations by Federal program officials.

## **10. Debarment and Suspension**

Program Officers should verify if a grantee is currently on the debarment and suspension list. The debarment and suspension procedures are intended to prevent waste, fraud and abuse in procurement and non-procurement actions. Debarment or suspension of an organization or individual from doing business with the Federal Government is not meant to be a punishment, but a procedure to ensure that federally-funded business is conducted legally with responsible persons. Details concerning Debarment and Suspension are located in Chapter 6, Section B part 2 Checking the Debarment and Suspension Database.

**Chapter 4**  
**Pre-Award Procedures**  
**Developing and Posting the RFA**

## **A. Determining How Applications Will Be Evaluated**

Applications for discretionary assistance awards are generally evaluated and awarded on a competitive basis. Applications are to be evaluated under an objective review process with subject matter experts in the program that funds the assistance awards. An objective review and recommendation is essential to ensuring selection of applications that best meet the needs of the program consistent with published evaluation criteria, and for providing assurance to the public that the evaluation process is impartial and fair.

Applications may be evaluated and scored based on an adjectival or numeric rating structure. The structure must be clearly defined so that the reviewers will be in a position to apply the rating system accurately and fairly.

## **B. Creating the Evaluation Plan**

An evaluation plan must be prepared prior to the development of an RFA. Such a plan should include information relative to the evaluation procedure to be followed and the criteria to be used in the objective evaluation of applications received as a result of the RFA.

## **C. A Request Document**

A document is prepared by the program office to request funds for the award.

## **D. Required Accompanying Documents with the Request Forms**

The following information or documents must be provided along with the request form:

- Factors supporting the use of an assistance agreement;
- Extent of competition and justification for non-competitive grant or a sole source award (if applicable); or, a list of suggested sources for limited competition;
- Statement of purpose (background and objectives) and general project requirements;
- Applicant eligibility, including any cost-sharing considerations, and application requirements, including format and content;
- Evaluation criteria for technical merit, if the award is to be competed, and proposed evaluation panel members;
- Award selection factors and funding priorities or preferences which would affect selection, if competitive;
- Estimated funding level on a per project basis and approximate number of anticipated awards;
- Reporting requirements; and
- Any special provisions of the award, such as government-furnished property or intellectual property rights.

## **E. Announcing the Opportunity**

The public must be provided with an advanced notice, on Grants.gov, of intended funding priorities for all discretionary assistance programs or projects, unless funding priorities are established by statute. Whenever time permits, the public shall be provided an opportunity to comment on intended funding priorities.

Grant program announcements must include, at a minimum, a Federal point of contact, information on eligibility requirements, application procedures, proposal evaluation criteria, special award selection factors (if any), and terms and conditions of the awards. The following are Sections 1-4 which discusses items that are normally included in the announcement and Request for Applications (RFA).

### **1. Synopsis**

A synopsis is a summary of the RFA to give potential applicants notice of RFA availability and to allow them to search and skim quickly for various criteria.

The required data elements for synopses posted in Grants.gov include:

- agency user identification
- agency user password
- announcement type (initial announcement or modification)
- funding opportunity title
- funding opportunity number
- CFDA number
- federal agency name
- federal agency contact for electronic access problems (name, email, phone)
- funding opportunity concise description
- funding instrument types (grant (G), cooperative agreement (CA), or other (O))
- category of funding activity
- estimated total program funding
- expected number of awards
- ceiling and floor, if any, on individual awards
- how to get full announcement
- electronic link to full announcement
- eligible applicants
  - 99 unrestricted
  - 00 state governments
  - 01 county governments
  - 02 city or township governments
  - 04 special district governments
  - 05 independent school districts
  - 06 state-controlled institutions of higher education
  - 07 federally recognized Native American tribal governments
  - 08 public/Indian housing authorities
  - 11 Native American tribal organizations (other than federally recognized tribal governments)
  - 12 nonprofits with 501(c)(3) IRS status, other than institutions of higher education

- 13 nonprofits without 501(c)(3) IRS status, other than institutions of higher education
- 20 private institutions of higher education
- 21 individuals
- 22 for-profit organizations other than small businesses
- 23 small businesses
- additional information on eligibility
- cost-sharing or matching requirement
- due date for applications, with explanation, if necessary
- date of Grants.gov FIND posting
- date for Grants.gov FIND to archive

## **2. Request for Applications**

Grants.gov refers to the RFA as a “full announcement.” It also refers to “application instructions.”

## **3. Required Elements of the Standard Announcement Template**

OMB requires that program announcements begin with an overview (which mirrors the synopsis). The common RFA format for all federal agency assistance program announcements contains the following elements (required unless “optional” is indicated):

### **Overview Information:**

- Federal agency name
- Funding opportunity title
- Announcement type (initial announcement or modification)
- Funding opportunity number (RFA number)
- CFDA number
- Key dates
- Any additional information the agency feels is essential in the overview (optional)

### **I. Funding Opportunity Description**

### **II. Award Information**

### **III. Eligibility Information**

1. Eligible Applicants
2. Cost Sharing or Matching
3. Other

### **IV. Application and Submission Information**

1. Address to Request Application Package
2. Content and Form of Application Submission
3. Submission Dates and Times
4. Intergovernmental Review, if required

#### 5. Funding Restrictions

This should include any prior approval requirements, such as sub-awards, travel, training, equipment, etc., and any categories of restricted or unallowable costs particular to the program, such as legislative limits on indirect costs.

#### 6. Other Submission Requirements

### **V. Application Review Information**

#### 1. Evaluation Criteria

#### 2. Review and Selection Process

#### 3. Anticipated Announcement and Award Dates (optional)

### **VI. Award Administration Information**

#### 1. Award Notices

#### 2. Administrative and National Policy Requirements

#### 3. Reporting Requirements

### **VII. Agency Contact(s)**

### **VIII. Other Information (optional)**

## **4. Applicable Regulations**

The following provisions are standard requirements of DOT awards and are normally listed in the back of the RFA:

- Titles 31 (Money and Finance: Treasury), and 49 (Transportation) of the Code of Federal Regulations. These set forth regulations applicable to assistance awarded by the federal government and DOT, respectively.
- 2 CFR Part 220 (OMB Circular A-21), Cost Principles for Educational Institutions. This Circular establishes principles for determining costs applicable to grants, procurement contracts, and other agreements with educational institutions.
- 2 CFR Part 225 (OMB Circular A-87), Cost Principles for State and Local Governments. This Circular provides principles for determining the allowable costs of programs administered by State, local, and Indian tribal governments under grants from and procurement contracts with the federal government.
- 2 CFR Part 230 (OMB Circular A-122), Cost Principles for Nonprofit Organizations. The principles set forth in this Circular shall be used by all federal agencies in determining the costs of work performed by nonprofit organizations under grants, cooperative agreements, cost reimbursement procurement contracts, and other procurement contracts in which costs are used in pricing, administration, or settlement.

- 48 CFR Part 31 (Federal Acquisition Regulations). This part contains cost principles that are applicable to for-profit organizations other than hospitals or other organizations named in 2 CFR Part 230 (see 49 CFR§18.22(b)).
- 49 CFR Part 17, Intergovernmental Review of Department of Transportation Programs and Activities. This Appendix gives guidance for implementing Executive Order 12372, as amended, Intergovernmental Review of Federal Programs, and 49 CFR part 17, Intergovernmental Review of Department of Transportation (DOT) Programs and Activities. Provisions of the Executive Order are based on Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended, 42 U.S.C. §3334, and intergovernmental cooperation legislation codified at 31 U.S.C. §6506.
- 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. This rule implements the A-102 common rule, which contains government-wide fiscal and administrative conditions governing federal grants and cooperative agreements and sub-awards to State, local, and Indian tribal governments, as implemented by DOT.
- 49 CFR Part 19, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations. This implements OMB Circular A-110 (now moved to 2 CFR Part 215), which sets standards for obtaining consistency and uniformity among Federal agencies in the administration of grants to, and other agreements with, public and private institutions of higher education, hospitals, and other nonprofit organizations.
- 49 CFR Part 20, Guidance for New Restrictions on Lobbying. This guidance generally prohibits recipients of federal assistance agreements and procurement contracts (including recipients of sub-awards), from using appropriated funds for lobbying in connection with a specific assistance agreement or procurement contract. It also requires that each person who requests or receives a federal assistance agreement or procurement contract (including a sub-award) to disclose lobbying undertaken with non-Federal funds.
- 49 CFR Parts 29 and 32, Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug-free Workplace (Grants). This rule establishes, among the Federal agencies, a uniform system of non-procurement debarment and suspension and includes requirements for a drug-free workplace.
- OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations. This Circular establishes audit requirements and defines federal responsibilities for implementing and monitoring such requirements for institutions of higher education and other nonprofit institutions receiving federal awards.

## F. Posting the Application

Once the RFA has been approved, it normally should be posted to Grants.gov, however, if grants.gov is not available for your program then the Federal Register, or other appropriate means should be utilized to post the application.

If posting to Grants.gov, instructions for doing so are available at:

- Quick Tips: [www.grants.gov/techlib/QuickTips.pdf](http://www.grants.gov/techlib/QuickTips.pdf)
- User Guide for Grantors: [www.grants.gov/resources/doc/UserGuide\\_Grantor.doc](http://www.grants.gov/resources/doc/UserGuide_Grantor.doc)
- Agency FAQs: [www.grants.gov/help/agency\\_faqs.jsp](http://www.grants.gov/help/agency_faqs.jsp)
- Additional help for agencies is available at: [www.grants.gov/agencies/agency\\_help.jsp](http://www.grants.gov/agencies/agency_help.jsp)

Additional questions you may have about posting to Grants.gov are listed below, along with answers:

- Is there a way to post the opportunity so that it can be viewed only by the sole source applicant (such as applications for earmarked awards)? ***No, anything posted on Grants.gov is open to the public.***
- How do you go back into the site (after posting the RFA) and obtain the RFA link for sending to a sole source applicant? ***Because anything posted to Grants.gov is open to the community, you would just access the site like an applicant looking for opportunities, locate the RFA, copy the link, and email it to the sole source applicant.***
- What is the “grace period”? ***This is strictly at the agency’s discretion. If the agency chooses to use it, it extends the application closing date by the indicated amount. This is not visible to applicants; they see only the closing date. The grace period may be entered in hours or days.***
- What should DOT staff do if applicants are having trouble with Grants.gov? ***Refer the applicants to [www.grants.gov/contactus/contactus.jsp](http://www.grants.gov/contactus/contactus.jsp)***

# **Chapter 5**

## **The Application Submission and the Application Technical Evaluation**

The application submission and the application technical review is the process in which the grantee will submit the proposal to Grants.gov. Following are the next steps performed by DOT:

## **A. Downloading Submitted Applications & Certifications from Grants.gov**

Resources available on Grants.gov can be located at the website links in Chapter 4, Section F.

## **B. Evaluating Received Applications**

The evaluation must be conducted in accordance with the evaluation plan created prior to the announcement. The evaluation plan may not be changed at this point.

### **1. Conducting a Technical Evaluation**

Applications must be reviewed by evaluators who are technically qualified to review the subject matter, and must be reviewed according to the evaluation criteria published in the announcement. A panel of reviewers must be convened for applications received under a competitive announcement

### **2. Conducting a Panel Review Meeting**

The appropriate staff member will assemble a review panel consisting of evaluators who are technically qualified to review applications responding to the program RFA. The members will be provided with copies of the Evaluation Plan, the RFA, and the applications that have been received. The members will be asked to sign the Conflict of Interest and Nondisclosure Agreement to assure a fair and confidential review. The members will be asked to review and rate each application prior to the panel meeting using the technical evaluation criteria contained in the Evaluation Plan and the RFA.

The panel review will consider each competitive application using the evaluation criteria in the Evaluation Plan. The primary factors for evaluation may include statutory requirements and criteria, the technical approach or methodology to be used in carrying out the project, the qualifications and experience of the applicant and the staff, and the reasonableness and appropriateness of the proposed budget.

The object of a rating structure is to provide advice on the relative merits of each application to assist in making award decisions.

## **C. Completing Conflict of Interest/Nondisclosure Agreement**

All panel members/evaluators or reviewers must sign the **Conflict of Interest/Nondisclosure Agreement** and give to the program office. In addition, all employees involved in the evaluation, award, and management of financial assistance agreements must have on file with their cognizant Chief Counsel's Office and executed OGE form 450 (Confidential Financial Disclosure Report.)

A reviewer has a conflict if for example:

- (1). The reviewer has agreed to serve as an employee or consultant on a project for which funding is being sought in an application under review, or has been offered the opportunity to do so and has not yet accepted or declined, based on whether a grant is awarded;
- (2). The reviewer's personal financial interests will be affected by the outcome of the competition;

- (3). The reviewer helped prepare an application in the competition, even if the reviewer has no financial interest in the outcome of that application; or
- a) 4. The reviewer or the reviewer spouse, his or her child or other household members has a relationship with an entity or individual that has a financial interest in the outcome of the competition. When questions arise with respect to Conflicts of Interest or if in doubt as to whether a conflict exists, personnel should consult with their Chief Counsel or the General Counsel's Office.

# **Chapter 6**

## **The Administrative Evaluation**

This section discusses the procedures and processes that follow the technical evaluation.

## **A. Conducting a Budget Review/Cost Analysis**

The following sections (1 thru 4) discuss the various items that should be checked during the budget review.

### **1. Reviewing the Proposed Budget**

Application budgets should be evaluated based on the same standards to which recipients will be held after award, which are outlined in the cost principles:

- 2 CFR Part 220 (OMB Circular A-21), Cost Principles for Educational Institutions
- 2 CFR Part 225 (OMB Circular A-87), Cost Principles for State, Local, and Indian Tribal Governments
- 2 CFR Part 230 (OMB Circular A-122), Cost Principles for Nonprofit Organizations
- 48 CFR Subpart 31.2, Cost Principles for Contracts with Commercial Organizations.

These principles require that all costs be necessary, allocable, and reasonable to be allowable charges to federal awards. The cost principles list certain costs which are unallowable, allowable and allocable only under certain conditions.

In addition to unallowable costs, the cost principles list certain costs that must be approved in advance. Application budget approval constitutes approval of these costs; however, if they are not included in the approved budget and the need for one of these costs arises after award, the recipient must request prior approval.

### **2. Evaluating Proposed Cost Sharing**

Cost sharing or matching is the portion of project/program costs not borne by the Federal government. The terms are used interchangeably and refer to either:

- a. A statutorily-specified percentage of project/program costs that must be contributed by a grant applicant in order to be eligible for funding; or
- b. Any situation where the applicant voluntarily shares in the costs of a project.
- c. Cost sharing by the recipient must be:
  - verifiable from recipient records;
  - not be utilized as a contribution for any other federally assisted project;
  - necessary, reasonable, and allowable for the project; and
  - not paid by the federal government under another award (unless authorized by statute).

Cost sharing should be listed in the approved budget, and changes to planned cost sharing must be approved by the program office. Sources of cost sharing may include unrecovered indirect costs (with the approval of the program office). Refer to 49 CFR § 18.24, [http://edocket.access.gpo.gov/cfr\\_2002/octqtr/pdf/49cfr18.24.pdf](http://edocket.access.gpo.gov/cfr_2002/octqtr/pdf/49cfr18.24.pdf) and 49 CFR §19.23, [http://edocket.access.gpo.gov/cfr\\_2004/octqtr/pdf/49cfr19.23.pdf](http://edocket.access.gpo.gov/cfr_2004/octqtr/pdf/49cfr19.23.pdf) for specific rules regarding valuation of the following for cost-sharing purposes:

- donated property, buildings, or equipment;
- voluntary services; and
- donated supplies.

### 3. Checking Labor Rates

For applicants subject to Davis-Bacon regulations, the relevant wage rates can be checked online at [www.wdol.gov](http://www.wdol.gov).

To check the reasonableness of other proposed pay rates under an award, you should check a wage survey site such as the Bureau of Labor Statistics [www.bls.gov/ocs](http://www.bls.gov/ocs), Watson-Wyatt, or other wage survey sources.

### 4. Verifying Indirect Cost Rates

Indirect costs are costs incurred by a grantee for common objectives that cannot be readily and specifically identified with a particular grant project or other institutional activity without effort disproportionate to the results achieved. Examples include:

- The costs of operating and maintaining facilities, equipment, and grounds (part of “facilities costs”);
- Depreciation or use allowances; and
- Salaries of administrators and services, such as payroll and personnel (known as “administrative costs”).

These costs are usually charged to the grant as a percentage of direct costs. This percentage is called the indirect cost rate and is obtained by dividing indirect costs by the total costs of a grantee (or the total modified costs of the grantee).

To simplify relations between Federal grantees and awarding agencies, OMB established the cognizant agency concept, under which a single agency represents all others in dealing with grantees in common areas. In this case, the cognizant agency reviews and approves grantees’ indirect cost rates. Approved rates must be accepted by other agencies, unless specific program regulations restrict the recovery of indirect costs. The Department of Health and Human Services (HHS) is the cognizant agency for all States and most cities.

The cognizant agency for non-profit organizations is determined by calculating which Federal agency provides the most grant funding. For example, The Department of the Interior is the cognizant agency for all Indian tribal governments. (See the following website for detail information <http://www.whitehouse.gov/omb/grants/attach.aspx>

Indirect cost rate cognizance for universities and institutions of higher education is assigned to either the Department of Health and Human Services (HHS) or the Office of Naval Research (ONR) [www.onr.navy.mil](http://www.onr.navy.mil).

Indirect cost rates which have been approved by the HHS Division of Cost Allocation are posted at [http://rates.psc.gov/fms/dca/new\\_search.html](http://rates.psc.gov/fms/dca/new_search.html).

These approved cost rates can be searched by:

- Institution Name
- Employer Identification Number (EIN)
- State
- Organization Type

Other agencies may be the cognizant agency for other recipients; however, these are the two largest offices for indirect cost rate approval.

The application of the indirect cost rate in the applicant's budget should be checked against the approved rate to ensure that it has been properly applied to the base as described in the approved indirect cost rate agreement.

For organizations for which DOT is the Cognizant agency for indirect costs, the Operating Administrations/Secretarial Offices shall negotiate the approved rate. Electronic copies of agreements containing the approved rates shall be forwarded to the Office of the Senior Procurement Executive (M-60), Financial Assistance Management Division (FAMD). The Office of Senior Procurement Executive will forward them to the Department of Health and Human Services for inclusion in its information system, to be made available to Federal agencies.

## **B. Conducting Pre-award Reviews of Potential Recipients**

The purpose of pre-award reviews of applicants is to determine whether they have the systems in place to manage DOT funds and if not, what agreement provisions need to be added to safeguard those funds.

### **1. Assessing Risk to Determine Level of Scrutiny**

Assessing applicant risk can help the OA decide whether to make an award and whether any special conditions need to be added to the award if one is made. Factors to weigh in assessing risk include:

- Past OA and DOT experience with the applicant;
- Experience of other federal agencies with this applicant (e.g., the Single Audit Clearinghouse Database, discussed in Chapter 6 section B, part 3;
- Recent audit findings (past 3 years);
- Results of any IG or GAO reviews that covered this applicant (i.e., [IGnet.gov](http://IGnet.gov) or [GAO.gov](http://GAO.gov));
- Award amount; and
- Factors related to the specific program.

If the risk assessment suggests a problem in a specific area, for instance financial management, then a desk review or pre-award site visit may be appropriate if there is a compelling reason to make the award.

### **2. Checking the Debarment and Suspension Database**

Program Officers should verify if a grantee is currently on the debarment and suspension list. All applicants should be checked against the Excluded Parties List that contains the names of all entities and individuals suspended or debarred from receiving federal funds. Go to [www.epls.gov](http://www.epls.gov) and search both the applicant entity and all key personnel listed in the award. If sub-recipients are listed in the application, research them as well. Print out your search results to document that you confirmed that the applicant and its personnel are not currently debarred or suspended.

Debarment and suspension procedures are intended to prevent waste, fraud and abuse in Federal procurement and non-procurement actions. Debarment or suspension of an organization or individual from doing business with the Federal Government is not meant

to be a punishment, but a procedure to ensure that federally-funded business is conducted legally with responsible persons. Debarment and Suspension (Non-procurement), 2 CFR Part 180, Subtitle A, Chapter I, provides rules for a Department-wide system of debarment and suspension under non-procurement transactions; the Federal Acquisition Regulation (FAR) Part 9.4, Debarment, Suspension, and Ineligibility, provides rules for procurement actions. Both 2 CFR Part 180, Subtitle A, Chapter I and the FAR provide for reciprocity between procurement and non-procurement actions. The General Services Administration (GSA) maintains the list of parties that are debarred, suspended, or excluded from doing business with the government <https://www.epls.gov>. Recipients and sub-recipients must not award or permit any award at any level to any party that is debarred or suspended from participation in Federal assistance or Federal procurement programs.

The Assistant Secretary for Administration shall notify the GSA, at least annually, of the DOT distribution requirements of the Excluded Parties List System (EPLS) from Federal Procurement or Non-procurement Programs.

DOT OS's and Secretarial offices administering procurement and non-procurement transactions shall:

- Encourage recipients to subscribe to and utilize the Monthly Lists of Parties Excluded from Federal Procurement or Non-procurement Programs published by GSA.
- Conduct debarment and suspension investigations in accordance with 2 CFR Part 1200 and make the final determination.
- Forward to GSA the required suspension or debarment information in accordance with 2 CFR Part 1200 and provide a copy to the Office of the Senior Procurement Executive.

### **3. Checking the Single Audit Clearinghouse Database**

Under the Single Audit Act, any non-Federal entity (i.e., a State, local government, tribal entity, educational institution, or nonprofit organization) that expends \$500,000 or more in federal funding in a year must have an audit performed in accordance with Office of Management and Budget Circular A-133, Audits of States, Local Governments and Nonprofit Organizations.

The audit reporting package (which includes the audited entity's financial statements, a schedule of expenditure of federal funds, the auditor's reports, a schedule of findings and questioned costs, and a corrective action plan) is submitted to the U.S. Census Bureau's Federal Audit Clearinghouse <http://harvester.census.gov/sac/>. In addition, the entity and its auditor must prepare and submit a Data Collection Form (SF SAC) which summarizes the results of the audit. The clearinghouse distributes the reporting packages to appropriate federal awarding agencies, and captures the information from the SF SAC forms in an online, searchable database.

**The SF SAC and the database provide five kinds of information:**

- General information such as the fiscal and audit period, type of audit, EIN, Data Universal Numbering System (DUNS) number, and Federal cognizant or oversight agency;

- Auditee information, including address, phone number, contact name, and a certification of completeness and accuracy of the information provided on the SF SAC;
- Auditor information;
- Financial statement audit information, which indicates the type of financial statement and the results of the financial statement audit; and
- Federal program information. This last set of data includes information about the A-133 audit results, the Federal awards administered by the entity, and an identification of the Federal agencies required to receive audit reporting packages.

The database originally was developed as a grants managing resource for Federal awarding agencies and was created in cooperation with OMB staff and representatives of more than 20 agencies. Therefore, the standard queries for accessing information in the database are organized to extract the data by federal agency and grant award programs they administer.

When searching the database, it is important to remember that the results link to the information contained in SF SAC database. You can only access the Data Collection Form <http://clinton5.nara.gov/media/pdf/sfsac.pdf>, not the entire reporting package, on the database.

It should be noted that the database contains a limited amount of information excerpted from the complete reporting package, and therefore, awarding agencies that have questions about anything they see on the Data Collection Form should request a complete reporting package. They should review the entire package before making any final decisions concerning an applicant.

The *Guide to Opportunities for Improving Grant Accountability* suggests using audit results to identify high-risk recipients.

#### **4. Checking Previous Grant History**

You can access information about an applicant's prior awards via the Federal Assistance Awards Data System (FAADS) at [www.census.gov/govs/www/faads.html](http://www.census.gov/govs/www/faads.html).

Although FAADS is the official Federal system, it can be difficult to access. If you have trouble with that site, a much easier-to-use site is at [www.USASpending.gov](http://www.USASpending.gov).

The Federal Assistance Award Database System (FAADS) captures fewer data elements than are required by the Federal Funding Accountability and Transparency Act (FFATA). FAADS does not collect data on Federal funds provided to foreign entities among other new data elements required under the Act. In contrast to the law's requirement to report on individual transactions, the system aggregates spending and is designed to post data on a quarterly basis versus monthly. Additionally, FAADS is over a year behind in updating and posting fiscal year data. Furthermore, the FAADS file format does not include all fields required by the FFATA. As such, a new file format has been developed, based on the current FAADS file format, to allow agencies to capture this information and provide directly to the FFATA web application. This new format, referred to as FAADS PLUS, extends the current FAADS file format to add fields for program source, DUNS, physical address, and loan financial data.

## 5. Researching the Applicant

Applicants should be checked against the EPLS as stated in this Chapter 6 under Section B, subsection 2. However, below are additional steps to research an applicant's history:

- Running a Google search on the applicant's name and any other names under which it does business to check for local or national news—positive or negative—mentioning the applicant or its key personnel;
- Checking the Better Business Bureau to see whether the applicant has complaints lodged against it: [search.bbb.org](http://search.bbb.org);
- Checking the Guidestar website to view the applicant's IRS 990 form: [www.guidestar.org](http://www.guidestar.org); and/or
- Obtaining Dun & Bradstreet or commercial credit reports on the applicant.

## C. Systems to Review

The following sections discuss criteria for reviewing applicant systems:

### 1. Accounting System

An OA has the authority to review the adequacy of the financial management or accounting system of any applicant for financial assistance as part of pre-award review or at any time subsequent to award.

Recipient accounting systems must meet the requirements of 49 CFR §18.20 (Local and Indian tribal governments) or 49 CFR §19.21 (universities and other nonprofits).

States are required to expend and account for grant funds according to the state laws and procedures governing expenditure of state funds. Per 49 CFR §18.20(a), the only other requirements states must meet are that their procedures must permit the preparation of reports required by 49 CFR Part § 18.20 and grant program authorizing statutes; and the tracing of funds to a level of expenditure adequate to ensure that funds have not been used in violation of applicable statutory requirements.

The standards in 49 CFR §§ 18.20 and 19.21 cover the areas which can be used as a checklist during site visits and desk reviews.

### 2. Financial Assistance System

Recipient financial assistance systems must meet the requirements of 49 CFR § 18.36 (Local and Indian tribal governments) or 49 CFR §§ 19.40–19.48 (universities, hospitals, and other nonprofits).

States are required to follow state laws and procedures governing financial assistance for purchases with federal funds. States must also ensure that every purchase order or other contract includes any clauses required by federal statutes and executive orders and their implementing regulations. (49 CFR § 18.36(a))

### 3. Personnel System

Criteria for review of personnel systems are derived from the cost principles and good business practices and include items such as the following:

- Does the recipient maintain an employee handbook or personnel manual?
- Does the recipient have written current position descriptions?
- Are the staffs in each position qualified, based on the position description?
- Is there a written recruiting and hiring procedure that ensures fairness and compliance with all applicable federal and state requirements?
- Is the compensation system reasonably tied to position descriptions and regular performance evaluations? Is it consistently applied, e.g., same pay scale regardless of funding source for the person's position?
- Are fringe benefits reasonable and consistently applied, e.g., same benefits regardless of funding source for the person's position?
- Does the recipient's timekeeping system meet the requirements of the applicable cost principles?

#### **4. Property Management System**

Types of property include real property, equipment, and supplies. States are permitted to follow State laws and procedures to use, manage, and dispose of equipment acquired with Federal funds. Other types of recipients should use property on the project for which it was originally acquired, until it is no longer needed, and then may use it on other projects as specified under (49 CFR §18.32(b);) Note that prior written agency approval is required before recipients can use real property on other federally supported projects (49 CFR § 19.32(b)).

#### **5. Travel System**

Recipients are permitted to follow their own travel policy, which should be maintained in writing. Governmental recipients subject to 2 CFR Part 225 (OMB Circular A-87) can be required to follow the Federal Travel Regulation if they have no written policy. 2 CFR Part 225, App. B, sec. 43(b). Good business practices dictate that travel policies should address, at a minimum:

- Authorization and approval for travel, including any grant- or contract-specific requirements;
- The responsible party for making reservations (centralized reservations are preferred as an internal control mechanism);
- Rules for travel advances;
- Rules for use of personal and recipient entity credit cards;
- Reimbursement policy, example of some expenses includes:
  - a. actual expenditures or per diem?
  - b. if actual expenditures, is there a threshold below which receipts are not required? (this threshold cannot be lower than the currently applicable Internal Revenue Service (IRS) threshold);
- Trip reports; and

- Documentation policy.

If you are sampling travel expenditures, ask yourself these questions: Does the documentation show: 1) That the travel actually occurred?, and 2) Are the expenses necessary and reasonable charges to the award (or relevant project, if you are testing expenditures as part of a pre-award review)? When assessing reasonableness and allowability, consider award provisions applicable to travel, e.g., Fly America; standards such as the IRS mileage reimbursement rate; and cost principles requirements. Look at the following topics in the applicable cost principles, as relevant to the situation: Travel, Recruiting, Relocation, Participant Support Costs, and Sabbatical Leave.

## 6. Sub-award System

If the applicant/recipient is a pass-through entity that will be sub-awarding DOT funds to sub-recipients, this sub-award system should meet certain requirements laid out in the Department's regulations and OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations.

An important concept to understand about the pass-through relationship is that there is no privity between sub-recipients and DOT: the pass-through entity is solely responsible for all Federal funds granted to it, including funds passed through to sub-recipients. Any sub-recipient expenditures that may eventually be disallowed must be repaid to the government by the pass-through entity, regardless of whether the entity has been able to recover the funds from the sub-recipient.

States follow state law and procedures when awarding and administering sub-grants to Local and Indian tribal governments and must also:

- Ensure that every sub-grant includes any clauses required by federal statute and executive orders and their implementing regulations;
- Ensure that sub-grantees are aware of requirements imposed upon them by federal statute and regulation;
- Ensure that a provision for compliance is placed in every cost-reimbursement sub-grant; and
- Conform any advances of grant funds to sub-grantees substantially to the same standards of timing and amount that apply to cash advances by federal agencies.

According to 49 CFR §18.37(a):

Local and Indian tribal pass-through entities must follow the provisions of 49 CFR Part 18 applicable to Federal agencies when awarding and administering sub-grants and must also:

- Ensure that every sub-grant includes a provision for compliance with 49 CFR part 18 .37, as applicable;
- Ensure that every sub-grant includes any clauses required by federal statute and executive orders and their implementing regulations; and
- Ensure that sub-grantees are aware of requirements imposed upon them by federal statutes and regulations.

Institutions of higher education, hospitals, or other non profits as well as nonprofit/university pass-through entities must follow the provisions of 49 CFR Part 19 applicable to federal agencies when awarding and administering sub-grants.

All pass-through types must meet the provisions of OMB Circular A-133 §\_\_.400 (d), <http://www.whitehouse.gov/omb/circulars/a133/a133.html> which requires pass-through entities to do the following for each sub-award they make:

- Identify Federal awards made by informing each sub-recipient of CFDA title and number, award name and number, award year, if the award is R&D, and name of Federal agency. When some of this information is not available, the pass-through entity must provide the best information available to describe the federal award.
- Advise sub-recipients of requirements imposed on them by Federal laws, regulations, and the provisions of contracts or grant agreements as well as any supplemental requirements imposed by the pass-through entity.
- Monitor the activities of sub-recipients as necessary to ensure that Federal awards are used for authorized purposes in compliance with laws, regulations, and the provisions of grant agreements and that performance goal are achieved.
- Ensure that sub-recipients expending \$500,000 or more in Federal awards during the sub-recipient's fiscal year have met the audit requirements of A-133 for that fiscal year.
- Issue a management decision on audit findings within six months after receipt of the sub-recipient's audit report and ensure that the sub-recipient takes appropriate and timely corrective action.
- Consider whether sub-recipient audits necessitate adjustment of the pass-through entity's own records.
- Require each sub-recipient to permit the pass-through entity and auditors to have access to the records and financial statements as necessary for the pass-through entity to comply with A-133.

When reviewing a recipient's sub-awarding system, look at their system for monitoring sub-awards. Promising practices identified in the *Guide to Opportunities for Improving Grant Accountability* <http://www.ignet.gov/randp/grantguide.pdf> include:

- Developing guidance to assist sub-recipients;
- Publishing materials detailing sub-recipient responsibilities; and
- Coordinating efforts to monitor performance.

## **D. Methods of Review**

Depending on the level of risk for the award and experience of the applicant, options available for determining whether applicant systems can properly manage DOT funds include:

## **1. Financial Management Capability Certifications and Questionnaires**

Requiring applicants to submit a certification of financial management capabilities, also known as a financial management capability questionnaire, is an approach taken by several Federal agencies, including the Federal Mediation and Conciliation Service (FMCS) and the National Science Foundation (NSF). These forms survey the applicant's accounting system and financial status.

FMCS requires some applicants to submit the questionnaire and ensure its certification by an independent public accountant. NSF requires a financial management capability questionnaire be submitted by all applicants who have not received NSF funding within the previous two years; no independent accountant certification is required.

## **2. Desk Reviews**

A desk review involves requesting documentation from the applicant and reviewing it for compliance with Federal and DOT requirements. Refer to the following sections for information on what to look for during a desk review of these systems:

- Accounting System, Chapter 6, Section C, subsection 1
- Financial Assistance system, Chapter 6, Section C, subsection 2
- Personnel system, Chapter 6, Section C, subsection 3
- Property Management system, Chapter 6, Section C, subsection 4
- Travel system, Chapter 6, Section C, subsection 5
- Sub-Award system, Chapter 6, Section C, subsection 6

## **3. Site Visits**

Pre-award site visits may be justified for a very high-dollar award to an entity new to Federal grants to ensure Federal funds will be managed properly. Another circumstance that might justify a pre-award site visit is an applicant that has a past history of problems.

## **E. Other Areas to Check**

The following sections discuss additional checks that must be made prior to award.

### **1. Checking the Terrorist Watch List**

All applicants should be checked against the list of Specially Designated Nationals and Blocked Persons, which lists individuals and organizations associated with terrorism. It is available at: [www.treas.gov/offices/enforcement/ofac/sdn](http://www.treas.gov/offices/enforcement/ofac/sdn).

As with the EPLS list, you should print out documentation that demonstrates your confirmation that no applicants or applicant staff are on the list. The print out should be placed in the award File.

## **2. Checking the Disclosure of Lobbying Activities form (SF LLL)**

All lobbying disclosure forms (SF LLL) submitted shall be retained in the corresponding Post-award File.

Lobbying certifications and disclosures are submitted to ensure that both parties are aware of the lobbying restrictions and are taking measures to avoid violating them.

If a recipient discloses lobbying, agency staff should be aware of this when conducting a site visit so that proper segregation of funds can be confirmed. If any lobbying takes place that violates the provisions of 49 CFR §§ 20.100(a)-(e), the recipient may be fined in accordance with 49 CFR § 20.400.

## **F. Selecting the Recipient(s)**

Whereas contractors are selected based on the offer that is most advantageous to the government, assistance awards should be awarded based on the project plan that is most beneficial to the beneficiary population or the applicant most likely to achieve the intended “public purpose.” This “public purpose” should be incorporated into the selection criteria listed in the evaluation plan and the RFA. The recipient(s) should be selected based on:

- Compliance with the selection criteria;
- Proximity to any funding priorities (such as geographic location);
- Technical merit; and
- Value of the applicant’s project plan in meeting DOT’s Government Performance and Results Act (GPRA) goals.

Selection of all discretionary projects shall include an explanation of how the projects were selected based on the funding priorities established. Decisions not to fund projects with the highest priority shall be documented.

All discretionary project selections must be reviewed by a program official.

## **G. Clarify Information with Recipients**

Discussions with selected applicants shall include:

- Compliance with applicable cost principles (not negotiable);
- Realism and reasonableness of proposed costs;
- Review and confirmation of proposed cost sharing; and
- Financial administration details.

### **1. Pre-discussion Plan**

The pre-discussion plan begins by summarizing the award competition, listing the following:

- Legislative background;
- Funding availability and Assistance Request;
- Period of performance;
- Number of applications;
- Evaluation criteria;
- Results of the technical evaluation; and

- Results of budget review.

## **2. Negotiating Scope**

In cases where several awards may be made, sometimes it is necessary to ask an applicant to revise the scope of their application (e.g., to convert only 50 miles of railroad right-of-way to trails, rather than 100) so that additional recipients can be funded. A revision of scope should often be accompanied by a budget revision, and vice versa.

## **3. Negotiating Budget**

In cases where several awards may be made, sometimes it is necessary to ask an applicant to reduce their budget so that additional recipients can be funded. A reduced budget is often accompanied by a scope revision, and vice versa.

If the budget review noted areas where the applicant had over- or under-estimated certain costs, it is appropriate to point out the areas that seem unrealistic and ask the applicant to revise the budget accordingly.

The budget review also may have identified necessary changes to the proposed cost sharing, and the applicant may need to revise the budget to reflect changes in cost sharing.

## **4. Negotiating Substantial Involvement of the Technical Representative**

Under a cooperative agreement, the technical representative or another representative of the program office is expected to participate in substantial programmatic involvement during the project. If the agency has questions about the applicant's proposal for the agency's substantial involvement or the applicant has questions or issues with the agency's substantial involvement, the negotiation is the appropriate time to resolve those differences and clarify understanding for both sides. Waiting until the kickoff meeting to discuss these questions could jeopardize the award or make immediate amendments necessary.

## **H. Summary of Discussions**

The results of discussions should be recorded and signed by the OA program representatives and applicant representative, and filed in the award File.

## **I. Notifying Unsuccessful Applicants**

Unsuccessful applicants shall be notified of their status per OA's program representative guidance.

# **Chapter 7**

## **Post Award Administration**

## **A. Approvals Required**

Once the award document has been prepared, it must be approved by an official with the authority to approve that level of funding. Check OA's specific guidance for grant approvals.

## **B. Notifying Congress**

Interested members of Congress must be notified regarding assistance awards with a total value (including all options) that will exceed \$1 million. This is coordinated, within DOT, by the Office of the Assistant Secretary for Governmental Affairs.

OST has developed an automated, web-based system for notifying Congress of impending grant awards by DOT replacing the manual system previously used. This system is called the Grants Notification System (GNS); offices responsible for the award of grants must submit award information directly into the GNS. Congressional appropriating committees have historically included language in appropriations laws requiring the DOT to provide advance notification to the appropriation committees of certain grant selections, 72 hours before the States' Congressional delegation or the grant recipients are notified.

## **C. Notifying Applicants**

The award document should be transmitted to the recipient along with an accompanying transmittal letter explaining administrative aspects of the award.

## **D. Entering Award Data in the Grant Information System (GIS)**

The DOT Grant Information System (GIS) is a comprehensive information system that provides information about assistance awards, provides periodic reports on various aspects of assistance programs, and provides periodic reporting to the Federal Assistance Awards Data System (FAADS) as required by 31 U.S.C. § 6102(a). Except for awards to other Federal agencies or interagency agreements, all departmental financial assistance awards shall be reported to the GIS. Information on contracts awarded under the Federal Acquisition Regulation are not included in the GIS, but are reported to the Contract Information System. Reporting is done by a variety of means, such as manually prepared data entry forms, computer disks or tapes, or a PC-based data entry system. The GIS is designed to accommodate FAADS and the various (OA) and (SO) information systems as much as practicable.

The OAs and SOs shall:

1. Advise the OSPE of new assistance programs and make arrangements to have data submitted to the system.
2. Report all obligations of Federal assistance awards to the DOT Grant Information System (GIS) by the 15<sup>th</sup> day of the month following the end of each quarter. Reports shall contain obligation information for the previous quarter and any other awards not previously reported. The Office of the Senior Procurement Executive will provide required input forms and documentation requirements. Except when data is provided to the GIS by automated systems, a copy of the completed GIS input form DOT F 1340.7B shall be included in the project file for all DOT assistance awards.

The GIS must also be updated whenever award terms or conditions are modified.

## **E. Federal Funding Accountability and Transparency Act (FFATA)**

The Federal Funding Accountability and Transparency Act of 2006 (FFATA) requires the full disclosure of all entities or organizations receiving federal funds beginning in fiscal year (FY) 2007. The Act requires the creation of a single searchable website that allows the public, at no cost, to:

1. Search Federal funding by any element required by FFATA reporting;
2. Ascertain through a single search the total amount of *Federal funding awarded* to an entity, by fiscal year; and
3. Download data included in the outcome from searches.

Federal funding awarded means Federal financial assistance and expenditures that include grants, contracts, sub-grants, subcontracts, loans, awards, cooperative agreements, purchase orders, task orders, delivery orders, and other forms of financial assistance; and does not include individual transactions below \$25,000; and before October 1, 2008, does not include credit card transactions.

The Federal Assistance Award Database System (FAADS) captures fewer data elements than are required by the Federal Funding Accountability and Transparency Act (FFATA). FAADS does not collect data on Federal funds provided to foreign entities among other new data elements required under the Act. In contrast to the law's requirement to report on individual transactions, the system aggregates spending and is designed to post data on a quarterly basis versus monthly. Additionally, FAADS is over a year behind in updating and posting fiscal year data.

Furthermore, the FAADS file format does not include all fields required by the FFATA. As such, a new file format has been developed, based on the current FAADS file format, to allow agencies to capture this information and provide directly to the FFATA web application. This new format, referred to as FAADS PLUS, extends the current FAADS file format to add fields for program source, DUNS, physical address, and loan financial data.

## **F. Catalog of Federal Domestic Assistance (CFDA)**

The CFDA is a comprehensive listing of all Federal assistance programs. It provides information on program history, eligibility requirements, funding levels, application procedures, and Federal program points of contact. Executive departments and agencies are required to periodically provide updated information on existing and new programs in accordance with Public Law 98-169 or OMB Circular A-89. The Office of the Senior Procurement Executive coordinates the submission of departmental information to the General Services Administration (GSA), maintains required records, and provides guidance on reporting procedures as required. Executive departments and agencies are required to periodically provide updated information on existing and new programs in accordance with Public Law 98-169. While the CFDA is a helpful source of information about programs, it does not provide the most current information on application due dates for various competitions.

The OAs and SOs shall:

1. Provide the Office of the Senior Procurement Executive with a point of contact responsible for reporting CFDA data.
2. Advise the Office of the Senior Procurement Executive of new assistance programs and provide information on the programs as required.
3. Provide periodic information updates to the Office of the Senior Procurement Executive upon request. Content and format of submissions will be provided by that office.

## **G. Requests for Reimbursement**

Grantees request payment of the Federal share of allowable costs from the appropriate financial office within each OA. The OA either makes an advance payment or a reimbursement payment to the grantee, based upon the stated grant conditions.

The designated technical representative of each OA must review requests for payments. In approving the request for payment, the following should be considered:

- Is the amount requested reasonable considering the effort expended and/or progress attained by the grantee in fulfilling the grant statement of work?
- Is the grantee generally in compliance with the financial and program progress reporting requirements of the grant?
- Are the Federal funds requested reasonable in relationship to the matching share requirements?
- Are there any costs that require further clarification or documentation from the grantee to resolve questions whether the costs are allowable? Issues pertaining to allowability of costs include:
  - Conforming with project description and budget
  - Items necessary in order to accomplish the project
  - Documents reasonable for goods and services purchased
  - Actual net costs to the grantee
  - Costs incurred during the period of the grant
  - Satisfactory documentation

Payment should be rejected if the grantee is not in compliance with essential grant conditions, the amount requested is unreasonable in relationship to the work performed and estimated costs incurred, or any of the other factors set forth above require rejection.

## **H. Recipient Reporting Requirements**

Although it is the recipient's responsibility to submit reports on time, the recipients should be reminded, via email, of upcoming report due dates. Also, before reimbursement requests are approved, the Government must check to ensure all required reports have been submitted.

Reporting requirements for recipients are outlined in 49 CFR § 18.40 and §18.41 or §19.51 and §19.52, as applicable for the recipient type. Any additional reporting requirements must be based on statute or approved by OMB for class deviations or the Office of the Secretary for individual deviations. Provide the recipient with a schedule of report due dates. The following sections discuss the major reporting requirements.

### **1. Financial Reporting: Forms, Frequency, and Documentation Requirements**

49 CFR § 18.41 and 49 CFR § 19.52 require recipients to use financial reporting forms (or electronic forms requesting equivalent information). Grant recipients may be required to complete the following:

- SF 269 or SF 269A to report grant project financial status;
- SF 272 or SF 272A to report Federal cash transactions under an award paid via letter of credit, Treasury check advances, or electronic funds transfer;
- SF 270 to request payments, either by advance or reimbursement; or
- SF 271 to report outlays or request reimbursements for construction programs.

NOTE: The SF-269/269A and SF-272/272A are scheduled to be replaced during 2008 by the consolidated Federal Financial Report (FFR). The FFR contains four sections: (1) Status of Federal Cash, (2) Status of Federal Expenditures and Unobligated Balance, (3) Status of Recipient Share, and (4) Program Income. Agencies will choose the sections their recipients are required to complete and the frequency of report submission. These choices should be incorporated into grant terms and conditions. The SF-271 would remain unchanged. Because of the adoption of electronic drawdown systems, many agencies no longer use the SF-270.

Financial status reports must be required to be submitted at least annually, but no more frequently than quarterly, unless the recipient is designated a high-risk recipient.

### **2. Progress Reporting: Format, Frequency, and Data Requirements**

49 CFR § 18.40 or §19.51, as applicable to the recipient type, contain the requirements for progress reporting. The frequency of progress reports should be specified in the award terms, and should be required no more frequently than quarterly (unless the recipient has been designated high-risk)—and no less frequently than annually.

# **Chapter 8**

## **Records Management**

## **A. Pre-Award Files**

### ***When***

A pre-award file should be started when a Purchasing Request (PR) or Request for a grant is received from a program office.

### ***What***

A pre-award file may consist of the following pre-award documents, as they become available, or if applicable:

- Assistance Request (AR), including statement of objectives, legislative authority, explanation of required cost share, extent of competition
- Milestone Schedule
- Justification for Other-than-Full-and-Open Competition (JOTFOC), if necessary
- Evaluation Plan/Evaluation Factors for Award
- Synopsis/Request for Applications
- Received Applications
- Technical Evaluation/Panel Reports
- Cost Analyses and Pre-award Reviews of Potential Recipients
- Summary of Negotiations (if conducted) or Decision to Award Without Discussions
- Application(s) Selected for Award
- Award Review
- Technical Review
- Congressional/Public Affairs Notification (required if over \$1 million)
- Notifications Sent to Selected Recipients and Unsuccessful Applicants

## **B. Post-Award Files**

### ***When***

A post-award file should be started when an award is executed.

### ***What***

A post-award file may consist of the following post-award documents, as they become available, or if applicable.

- Letter(s) to Recipient
- Budget review and Pre-award Review
- Approved Application
- Pre-discussion Plan
- Summary of Discussions

- Certifications, including the SF 424B or SF 424D; Debarment, Suspension, and Other Responsibility Matters (Primary and Lower Tier); Certifications regarding Drug-Free Workplace and Lobbying; SF LLL or SF LLL-A.
- Correspondence/Miscellaneous
- Grant Information System (GIS) Form (DOT F 1340.7)
- Award
- Kickoff Meeting Checklist
- Monitoring Plan
- Agreement Amendments
- Funding Requests and Financial Reports
- Progress Reports
- Site Visit Reports/Desk Audits
- Audit Reports
- Annual Budget Reviews
- Government Property
- Equipment Disposition
- Closeout Checklist

### **C. Close-out Files**

A designated representative in each Operating Administration (OA) is responsible for maintaining the official grant file. Financial and programmatic records, supporting documents, statistical records, and other records of grantees or sub-grantees generally should be retained by all parties for three years. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.

The OA, the DOT Office of Inspector General (OIG), and the Comptroller General of the United States, or any of their authorized representatives, have the right of access to any pertinent books, documents, papers, or other records of grantees and sub-grantees in order to make audits, examinations, excerpts, and transcripts. The right of access is not limited to the required retention period as long as the records are retained. The Federal Freedom of Information Act (5 U.S.C. §552) does not generally apply to records held by grantees and sub-grantees. Unless required by Federal, State, or local law, grantees and sub-grantees are not required to permit public access to their records.

# **Chapter 9**

## Oversight

This chapter nine discusses the different types of oversight mechanisms utilized to ensure grants follow Federal laws and guidelines.

## **A. Defining Cost Principles**

The Assistant Secretary for Administration and OSPE shall issue additional specific instructions for implementing 2 CFR Part 225 (OMB Circular A-87), 2 CFR Part 230 (OMB Circular A-122) and 2 CFR Part 220 (OMB Circular A-21) only in those instances where the prescribed requirements need clarification.

In those cases where DOT is the cognizant Federal agency, the Office of Inspector General shall perform or arrange for audits of recipients' indirect cost proposals or cost allocation plans as necessary. Audits are normally performed only where a significant problem exists in a grantee's financial system.

The OAs and SOs shall:

1. Establish additional instructions, if required, for implementing the above directives.
2. If assigned cognizant responsibility, review and approve indirect cost rates and cost allocation plans in accordance with 2 CFR Parts 225, 230 and 220. The cognizant OA or SO shall also request required audits and prepare the negotiation agreement. To meet the distribution requirements of the OMB Circulars, electronic copies of agreements shall be forwarded to the Office of the Senior Procurement Executive (M-60). The Office of Senior Procurement Executive will forward these to the Department of Health and Human Services for inclusion in its information system, to be made available to Federal agencies.
3. Accept indirect cost rate and cost allocation plan agreements negotiated and approved by the Federal cognizant agency or by the OA or SO within DOT having cognizant administrative responsibility.
4. Provide technical assistance to recipients in cases where they need help in determining appropriate sub-recipient costs and indirect cost rates. The cognizant OA or SO shall review the recipient's procedures for determining the sub-recipient's indirect cost rate, recommend changes as required, and certify the rate so that it can be relied upon by all agencies providing funds to the sub-recipient. Documents setting forth the approved rates for sub-recipients and the approvals of these rates shall be forwarded electronically to the Office of the Senior Procurement Executive.
5. Use the cost principles established by subpart 31.2 of the FAR when administering financial assistance programs for for-profit organizations, unless justification is provided for establishing another basis for costs.
6. When preparing cost estimates for major projects (projects in excess of \$1 billion), include all eligible project costs, including interest on grant anticipation notes (GANs) that are funded with Federal dollars. Interest costs associated with the project not paid with Federal funds, e.g., GAN interest paid entirely with local funds or revenue bond interest, must be noted in project financial plans, but not considered as part of project cost estimates.

## **B. Project/Recipient Monitoring**

### **1. Applying a Risk-Based Approach to Monitoring**

In a risk-based approach to monitoring, recipient risk is used to determine the appropriate level of monitoring to safeguard funds and provide appropriate technical assistance to achieve compliance and project results.

Following are examples of factors that may affect the nature, timing, and extent of the-award monitoring process:

- *Program complexity*—Programs with complex compliance requirements have a higher risk of noncompliance.
- *Amount of awards*—Larger dollar awards are of greater risk, although lower dollar awards are not necessarily low-risk.
- *Recipient risk*—Generally, new recipients require closer monitoring, unless they have a successful history of managing Federal funds from other agencies. For existing recipients, based on results of during-the-award monitoring and recipient audits, a recipient may warrant closer monitoring if it has a history of noncompliance, new personnel, or new or substantially changed systems.

Note that recipients designated as high-risk pursuant to the requirements of 49 CFR § 18.12 and 49 CFR § 19.14 are subject to special award conditions outlined in the regulations. See [Chapter 9, Section 2, subsection \(c\), High-Risk Status](#).

### **2. Compliance**

Items listed in the initial approved budget are considered approved. However, as additional expenses arise during the course of the project, the recipient must request approval to incur certain or all additional expenses.

Financial status reports should be reviewed to determine whether the recipient is expending funds in accordance with the project plan—that is, whether the rate of expenditure is approximately equal to where the project should be at that time in the project year. Excessive over- or under-expenditures should be questioned to determine whether the recipient needs technical assistance in meeting the goals of the project or in staying within the project budget.

The recipient's cost sharing should also be monitored to ensure that it is contributing to the project as projected, in accordance with the approved application, and that cost sharing is appropriately distributed across project donors (that is, that the recipient isn't spending all the Federal dollars before chipping in its "share").

### 3. Conducting Site Visits

#### (a) Types of Site Visits

Agencies conduct many types of site visits, including:

- **Routine site visits**, e.g., where every recipient receives a site visit at a set interval or where a random sampling of recipients receives a site visit each year;
- **Reactive site visits**, where a specific recipient is visited to investigate a problem found through other monitoring;
- **Reverse site visits**, where the recipient visits the awarding agency; and
- **Proactive site visits**, where the awarding agency visits recipients to provide technical assistance.

#### (b) When Are Site Visits Permitted?

Pursuant to 49 CFR § 18.40(e) and 49 CFR § 19.51(g), an OA may make site visits as needed. OMB Circular A-102, Section ¶ (2)-(f), limits technical assistance site visits to governmental grantees to the following circumstances:

- In response to a recipient request;
- Based on demonstrated program or financial need; or
- For recipients designated high-risk pursuant to 49 CFR §18.12 or the DOT common grants management rule.

Factors to consider in determining whether a site visit is warranted include whether: the grantee had prior significant problems; the total grant amount is significant; the grantee has identified problems in the quarterly progress report; and the statement of work includes potentially high risk activities; or whether there is evidence of non-compliance with quarterly performance reporting requirements.

Site visits may focus on performance, compliance, or both. In the compliance area, the site visit may look at programmatic compliance, financial compliance, or both.

### 4. Preparing for a Site Visit

The basic steps involved in preparing for a site visit are:

- Meeting with other OA staff to determine the goals for the visit.
- Selecting the site visit team for their expertise related to the site visit goals.
- Contacting the recipient and conducting a conference call to plan the visit. Get recipient input on their goals for the visit, e.g. specific areas where they need technical assistance. Decide who you will interview, what documents you will want to see, and what project activities you want to observe.

- Sending a letter or email confirming the decisions made during the conference call.
- Preparing for the site visit by reviewing documents in the file, including the approved application, any requests for approval to change budget or scope, financial reports, progress reports, audits, and any notes on routine phone or email contacts.
- Retrieving the site visit instrument and customize as needed for this recipient. Site visit checklists should correspond to the performance and compliance expectations laid out in the assistance agreement.

A site visit checklist should include the requirement, source of the requirement (e.g., statute, regulation, or assistance agreement provision), whether the recipient is in compliance, and space to note required corrective actions and due dates.

Refer to the following sections for information on what to look for in these areas during a site visit:

- Accounting system, Chapter 6, Section C, subsection 1.
- Financial Assistance system, Chapter 6, Section C, subsection 2.
- Personnel system, Chapter 6, Section C, subsection 3.
- Property management system, Chapter 6, Section C, subsection 4.
- Travel system, Chapter 6, Section C, subsection 5.
- Sub-award system, Chapter 6, section C, subsection 6.

## **5. Onsite Activities**

A site visit usually consists of an entrance conference, document review, staff interviews, observation of project activities, and an exit conference. The site visit checklist should guide the visit and the site visit team should keep careful notes as they complete the checklist. At the exit conference, a summary of results should be shared with recipient management. Areas where corrective actions are required should be discussed, as well as due dates for implementing those actions.

## **6. Post-Visit Phase**

Following the visit, the site visit checklist should be used to complete a site visit report summarizing what was found. Both best practices and areas needing improvement should be included. For areas not in compliance, the report should include the corrective action plan, with due dates and official responsible for ensuring that the recipient carries out the corrective action on schedule.

## 7. Conducting a Desk Review

A desk review involves requesting documentation from the recipient and reviewing it for compliance with federal and DOT requirements. A desk review may occur as part of routine monitoring, e.g., the monitoring official requests travel policies from a random sampling of recipients; in response to a compliance finding for a specific recipient; or in preparation for a site visit.

## C. Audits and the Audit Reports

The Single Audit encompasses the examination of a recipient's financial records, [financial statements](#), federal award transactions and [expenditures](#), the general management of its operations, the systems of internal control, and the federal assistance itself received during the audit period (the time period of recipient operations which will be examined in the Single Audit, which is usually covers a natural or fiscal year). The Single Audit is divided into two areas: Compliance and Financial.

The compliance component of a Single Audit covers the study and understanding (planning stage) as well as the testing and evaluation (exam stage) of the recipient with respect to federal assistance usage, operations and compliance with laws and regulations. The financial component is exactly like a [financial audit](#) of a non-federal entity which includes the audit of the financial statements and accompanying notes. Depending on the recipient, the Single Audit can be simple and straightforward, or it could be complex and troublesome. This is due to the fact that there are millions of federal grants awarded each year to thousands of recipients, each with its own independent way of operating. Therefore, the Single Audit differs from recipient to recipient and from federal program to program.

The following two sections discuss the A-133 Audits in detail and the Enforcement Measures that can be utilized.

### 1. A-133 Audits and the Single Audit Clearinghouse Database

#### (A) Who Must Have an A-133 Audit?

Recipients of Federal assistance must comply with the Single Audit Act and its implementing circular, Circular A-133, *Audits of States, Local Governments and Nonprofit Organizations*. The circular requires states, local governments, and nonprofit organizations (including nonprofit educational institutions and nonprofit hospitals) that expend \$500,000 or more in Federal awards annually to have an annual single or program-specific audit. A "single audit" is so called because, whereas, in the past Federal programs required separate audits of awards under different Federal programs, all of these are now encompassed in one audit, thereby saving the government money and the recipient unnecessary burden.

For-profit entities are not covered by the Single Audit Act or Circular A-133.

#### (B) Audit Standards

An independent auditor must conduct the audit in accordance with the requirements in Circular A-133, and the Generally Accepted Government Auditing Standards, as well as guidance provided in the OMB Circular A-133 Compliance Supplement. The [OMB Circular A-133: Compliance Supplement](#) is a large and extensive guide created

by the OMB for Single Audits, and is considered the most important tool of both the auditor and the recipient when performing, or being subject to, a Single Audit. It was created following amendments in 1996 to the Single Audit Act and serves to identify existing important compliance requirements that the Federal Government expects to be considered as part of a Single Audit. Without it, auditors would need to research thousands of laws and regulations for each single program of a recipient to determine which compliance requirements are important to the Federal Government. For Single Audits, the Supplement replaces any agency audit guides and other audit requirement documents for individual Federal programs.

DOT personnel have various responsibilities in regards to oversight: The following outlines those duties.

**(1) The Assistant Secretary for Administration shall:**

- Issue any additional guidance as required.
- Maintain an updated list, as provided by OMB, of cognizant agency assignments for single audits.
- Assign cognizant administrative responsibility in instances where the OAs or SOs that provide funds are unable to make a determination as to who will carry out this responsibility.
- Assign a person responsible for providing annual updates to the compliance supplement to OMB.

**(2) The OIG shall:**

- Provide technical advice and liaison to OAs, SOs, recipients, and independent auditors, as required.
- Ensure that audits are made in accordance with OMB Circular A-133, and advise the recipient of audits that are deficient in meeting requirements. The OIG shall also notify the cognizant OA or SO of audits not meeting these requirements for follow-up action.
- Obtain or provide quality control reviews of selected audits made by non-Federal auditors to ensure that audits are performed in compliance with OMB Circular A-133, generally accepted auditing standards and "Government Auditing Standards." Results will be provided to the OA or SO whose program or activities are subject to audit by the entities. When appropriate, results should be provided to other interested organizations.
- Inform other effected Federal organizations and appropriate Federal law enforcement officials (including State and local officials if necessary) of any reported illegal acts or irregularities.
- Coordinate audit work performed by or for Federal/non-Federal organizations that are in addition to the audits required by OMB Circular A-133 so that additional audits build upon such audits to achieve the most efficient and cost effective results.

- Advise the auditor and, where appropriate, the auditee of any deficiencies found in the audit.
- Consider auditee requests to qualify as a low-risk audit.
- Coordinate the management decisions for audit findings that affect the programs of more than one agency.

**(3) Each OA and SO shall:**

- Establish and maintain tracking mechanisms for recording receipt of audit reports requiring corrective actions and monitoring the status of these actions. Recipients shall be instructed to submit an appropriate number of copies of audit reports directly to the Bureau of Census Federal Audit Clearinghouse.
- Establish and enforce appropriate audit coverage for recipients not covered under OMB Circular A-133. Audit requirements for these recipients shall be established and performed for the program in a manner that ensures the Federal interest is adequately protected.

**(4) Each OA and SO assigned cognizant administrative responsibility for a recipient shall:**

- Ensure that audits are made and reports are distributed in a timely manner.
- Issue management decisions on audit findings within six months, and ensure that recipients take prompt corrective action. Copies shall be submitted to the OIG and other appropriate officials.
- Consider auditor requests for extensions of report submission due date, with the advice and assistance of the OIG.
- Negotiate with recipients to correct system deficiencies and resolve questioned costs for findings that affect two or more OAs/SOs. If agreed to by the cognizant agency and OAs/SOs, specific DOT-related deficiencies or questioned costs may be resolved by the affected OA/SO.

**(C) The Audit Reporting Package**

The results of an A-133 audit are summarized in a Data Collection Form, which is made public on the Single Audit Clearinghouse Database. The Single Audit Clearinghouse Database is located online at: <http://www.harvester.census.gov/sac>. See Chapter 6, section B subsection 3 for more information on searching the database.

If the recipient had findings related to funds provided directly or indirectly by DOT, the agency can obtain a copy of the audit from the Single Audit Clearinghouse). The audit reporting package consists of the following parts:

- The audited entity's financial statements;
- A schedule of expenditure of Federal funds;
- The auditor's opinions and reports on the financial statements, internal control, and compliance;
- A schedule of findings and questioned costs;

- A summary schedule of prior audit findings; and
- A corrective action plan (if there are finding to be corrected).

From a monitoring standpoint, the most interesting parts of the reporting package are the schedule of findings and questioned costs, the summary schedule of prior audit findings, and the corrective action plan. The auditor's opinions and reports are usually almost entirely boiler plate language, but should be reviewed to identify references to problems found that did not meet the threshold for being reported as findings, as well as references to separate letters to recipient management.

The schedules of findings and questioned costs and prior audit findings should be reviewed first to identify any findings related to the OA programs being monitored, but also to identify any findings that could affect projects funded by the OA, such as systemic problems with timekeeping or equipment inventory procedures. Areas of weakness identified by the auditor should be monitored more closely, through desk reviews, site visits, and follow up on the corrective action plan.

#### **(D) Audit Resolution**

The DOT Office of Inspector General (OIG) Audit Office presents A-133 audit findings that require resolution. The applicable Program Officials work with the Grantee in order to achieve resolution of the finding(s) and render a management decision of each of the finding(s) identified.

The management decision must clearly state whether or not the audit finding is sustained; the reasons for the decision; and the expected auditee action to repay disallowed costs, make financial adjustments, or take other action. If the auditee has not completed corrective action, a timetable for follow-up should be given. Prior to issuing the management decision, the OA official may request additional information or documentation from the recipient, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs. The management decision should describe any appeal process available to the recipient. A management decision must include the reference numbers the auditor assigned to each audit finding in accordance with OMB Circular A-133§\_\_.510(c) and A-133 §\_\_.405(a), (e). The Program Officials provide documentation of the management decision to the OIG in order for the finding(s) to be resolved and closed (if applicable) in the OIG's Transportation Inspector General Reporting (TIGR) system.

## **2. Enforcement Measures**

Enforcement measures should match the seriousness of the problem. The designated OA official should apply sound judgment in determining what enforcement measures are appropriate for a situation. A minor problem would be handled through a call or email to the recipient. If reminders do not have the desired effect, the designated OA official might determine that it is appropriate to temporarily withhold grant payments until the report is received. But if a recipient fails to materially comply with award terms and conditions, the OA may suspend the grant pending corrective action, or may terminate the grant for cause.

Remedies for noncompliance are provided under Department regulations at 49 CFR § 18.43 and 49 CFR § 19.62. Actions may include:

- Temporarily withholding cash payments pending correction of the deficiency by the recipient;

- Disallowing all or part of the cost of the activity or action not in compliance;
- Wholly or partly suspending or terminating the current award;
- Withholding further awards; or
- Taking other remedies that may be legally available, (for example, converting the recipient from advance payment to reimbursement).

Also, as provided in FAR 48 CFR § 18.03,

[http://www.access.gpo.gov/nara/cfr/waisidx\\_03/48cfrv1\\_03.html](http://www.access.gpo.gov/nara/cfr/waisidx_03/48cfrv1_03.html), in taking an enforcement action, the designated OA representative will provide the grantee or sub-grantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or sub-grantee is entitled under any statute or regulation applicable to the action involved.

Costs of the grantee or sub-grantee that are incurred during a suspension or after termination of an award are not allowable unless the OA expressly authorizes them in the notice of suspension or termination or subsequent written notice. Other grantee or sub-grantee costs incurred during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

- The costs resulting from obligations which were properly incurred by the grantee or sub-grantee before the effective date of suspension, or termination, and are not incurred in anticipation of the action ; and
- The costs would be allowable if the award were not suspended or expired.

Enforcement actions need to be approved by the Associate Administrator for the office involved as well as coordinated with the Office of Chief Counsel.

The enforcement remedies, including suspension and termination, do not preclude the grantee or sub-grantee from being subject to debarment and suspension under Executive Order 12549.

#### (a) Preliminary Measures

When the auditor believes that a grantee has failed to comply with one or more grant terms and conditions, the designated OA official will normally advise the recipient in writing of the nature of the problem and that failure to correct the deficiency may result in suspension or termination of the grant. For minor noncompliance, such as failure to submit a report on time, the designated OA official may elect to take a more informal approach prior to sending a formal notification letter, e.g., emailing the project director to remind the recipient that the report is overdue and providing a short grace period in which to correct the problem. Documentation regarding all informed attempts should be kept in the financial assistance file.

When a formal notice is sent, the grantee should be asked to respond in writing within 30 calendar days of the date of the notice letter. The grantee should be asked to describe corrective actions taken or lay out a corrective action plan designed to correct the deficiency, including the timetable for corrective actions. The letter should be sent to the authorized recipient organizational representative and the recipient project director by certified mail, return receipt requested.

Even if a recipient is taking corrective action, the OA may take proactive steps to protect the Federal government's interests, including temporarily withholding

payments, placing special conditions on awards, or precluding the recipient from obtaining future awards for a specified period, or may take action designed to prevent future noncompliance, such as engaging in closer monitoring. The following sections addressed additional procedures to assist in enforcement. (See, Chapter 9, Section 2, subsection (b) for information on temporarily withholding payments, Chapter 9, Section 2, subsection (c) for coverage of special conditions for high-risk recipients, and Chapter 9, Section 2, subsection (f) for information on withholding future awards).

Normally, action by an OA to suspend or terminate a grant will be taken only after the recipient has been informed by the OA of the proposed action, or informed of any deficiency on its part and given an opportunity to correct it. However, the OA may immediately suspend or terminate a grant without notice when it believes such action is reasonable to protect the interests of the government. (See Chapter 9, Section 2, subsection (d) and Chapter 9, Section 2, subsection (e), respectively.)

### **(b) Withholding Payment**

Sometimes, the OA may determine that it is necessary to withhold payments temporarily, to encourage the recipient to implement promised corrective actions in a timely manner. This step is normally taken after the recipient fails to resolve deficiencies following a formal notification letter, or in circumstances where rapid correction is needed to protect the interests of the government.

If the decision is made to suspend payments, the OA should inform the grantee in writing of the decision and the approximate date on which payments will be suspended if satisfactory resolution is not achieved.

If a deficiency is identified in the implementation of the grant, then costs incurred and payments withheld during the period of the suspension of payments (as opposed to the suspension of the award) under an award are allowable pursuant to award conditions and the applicable cost principles and should be paid once the deficiency has been corrected. In this case the grantee has not been suspended and it appears the compliance issue can be corrected.

### **(c) High-Risk Status**

Pursuant to 49 CFR § 18.12 and 49 CFR § 19.62, certain recipients can be placed on “high-risk” status and subjected to special award conditions. A recipient may be considered high risk if the OA determines that the recipient:

- Has a history of unsatisfactory performance;
- Is not financially stable;
- Has a management system which does not meet the management standards set forth in the common grants management rule (49 CFR Part 18 or 19, as applicable);
- Has not conformed to terms and conditions of previous awards; or
- Is otherwise not responsible.

If designating a recipient “high risk,” a copy of the notification letter must be sent to both the Assistant Secretary for Administration and the Assistant Inspector General for Auditing.

A high-risk determination may be made at the time of award or during performance. The designated OA official, in consultation with the Associate Director of Financial Assistance

Management and Associate Director of Acquisition Services, makes the determination that a recipient is high-risk. The Office of Chief Counsel should also be consulted in making high-risk determinations. Once the determination is made, special conditions and/or restrictions corresponding to the high-risk condition should be included in the award. Special conditions or restrictions may include:

- Ensuring payment on a reimbursement basis;
- Withholding authority to proceed to the next phase until the OA receives proof of acceptable performance within a given funding period;
- Requiring additional, more detailed financial reports;
- Providing additional project monitoring;
- Requiring the grantee to obtain technical or management assistance; or
- Establishing additional prior approvals.

If special award conditions are imposed, the designated OA official will notify the recipient as early as possible, in writing, of the:

- Nature of the special conditions/restrictions;
- Reason(s) for imposing them;
- Corrective actions which must be taken before the conditions will be removed and the time allowed for completing the corrective actions; and
- Method of requesting reconsideration of the conditions/restrictions imposed.

For nonprofit/university recipients, 49 CFR § 19.14(c) requires that a copy of the notice sent to the recipient, must also be sent to the Assistant Secretary for Administration.

When the designated OA official determines that the recipient has corrected the problems and the special conditions are no longer needed, the Associate Director of the Financial Assistance Management Division and the Associate Director of the Acquisition Services Division and the Office of Chief Counsel should be notified. Special conditions should be removed promptly once corrective actions have been implemented.

#### (d) Suspension

Suspension is an appropriate enforcement measure in cases of serious noncompliance, for instance when the deficiency is egregious, or when a recipient fails to implement its corrective action plan. Examples of situations that might support a decision to suspend a grant may include, but are not limited to:

- Serious risk to persons or property;
- Violations of Federal, State, or Local criminal statutes; and
- Material violation(s) of the grant or cooperative agreement.

After identifying the violation or deficiency and attempting resolution through the preliminary measures detailed in Chapter 9, Section (D) subsection 2 (a), the OA should work with the Chief of the Assistance Agreements and Acquisition Services

Division and the Office of Chief Counsel to determine the appropriate course of action. If preliminary measures fail to bring the recipient into compliance, many agencies generally will suspend (rather than immediately terminate) a grant and allow the recipient an opportunity to take appropriate corrective action before making a termination decision. The OA may decide to terminate the grant if the recipient does not take appropriate corrective action during the suspension period.

If the OA determines suspension is the appropriate remedy, it should send a notice to the recipient informing the recipient that the award will be suspended beginning 30 days from the notice date unless the recipient initiates appeal action within the 30-day period.

Notice of suspension should be sent by certified mail (return receipt requested) to the authorized recipient organizational representative, with a copy to the recipient project director. The notice will set forth the terms of the suspension and its effective date.

Normally, the suspension will remain in effect for a maximum of 60 days to allow the grantee to take corrective action. In the event that the deficiency is not corrected to the designated OA official's satisfaction, the designated OA official should consult with the Associate Director of Financial Assistance Management Division, the Associate Director of the Acquisition Services Division and the Office of Chief Counsel regarding whether to proceed with termination. (See Section (e) below). The notice should set forth the reasons for the suspension and its effective date, and the actions expected of the recipient.

Costs incurred by the recipient during the suspension of the award are not allowable unless expressly allowed by the suspension notice. 49 CFR § 18.43(c); 49 CFR § 19.62(c)

### (e) Termination

If the deficiencies are not corrected during the suspension period, or when the deficiencies are so egregious that an end to the grant is the only plausible option, the designated OA official should consult with the Chief of the Assistance Agreements and Acquisition Services Division and the Office of Chief Counsel regarding whether to proceed with termination.

Notice of termination should be sent by certified mail (return receipt requested) to the authorized recipient organizational representative, with a copy to the recipient project director. The termination notice should set forth the reasons for the action and its effective date. Any appeal procedures should also be explained in the termination notice.

When the termination action is finalized, the recipient must refund the unobligated or unspent portion of funds. It is customary to allow costs related to obligations incurred prior to the suspension or termination notice, provided that those costs would be otherwise allowable and cannot be cancelled. Costs resulting for obligations incurred by the recipient following termination of the award are not allowable unless expressly allowed by the termination notice (49 CFR §18.43(c); 49 CFR §19.62(c)).

### (f) Withholding Future Awards

The OA may decide not to award a continuation award for the next budget period for one or more of the following reasons:

- The recipient failed to show satisfactory progress in achieving project objectives.

- The recipient failed to meet the award terms and conditions in the preceding budget period.
- Continued funding would not be in the best interests of the Federal government.

## **D. Annual Budget Reviews**

Recipients of awards that continue for two or more years must submit an annual statement declaring whether their original project budget remains accurate, or whether revisions are necessary, accompanied by a revised/updated SF 424 budget form. This statement is due approximately two months prior to the end of the project year. The designated OA official should remind the recipient to submit this information.

Once this statement is received, the designated OA official should schedule a conference call/meeting where progress-to-date, financial status, and future requirements are discussed.

## **E. Closeout**

The grant closeout is the process by which an OA and grantee perform final actions that document completion of work, administrative requirements, and financial requirements of the grant agreement. The OA, the grantee, and other involved parties need to fulfill these requirements promptly to avoid unnecessary delays in grant closeout. Prompt closeout of awards is important so that accurate agency financial reports can be prepared and unused award funds can be made available for other purposes.

The designated OA official should immediately begin to close out an award file as soon as all required reports have been submitted.

When closeout is complete, GIS should be changed in the system and the file should be marked Closed and submitted to Document Control. The following are three major areas that can guide the OA in ensuring closeout requirements are met.

### **1. Closeout Checklist**

Before officially closing out a grant file, ensure that the following steps have been completed:

- Recipient has submitted all required performance reports under the award, including the final performance report.
- Recipient has submitted all required financial reports under the award, including the final financial report.
- The designated OA official has reviewed the final financial report and amounts align with amounts in the OA's system.
- Equipment/property has been properly disposed of as discussed under Chapter 9, section E part 2below.
- Recipient has accounted for all required cost sharing, if applicable. If required cost sharing was not met, the proportionate share of federal funding must be returned to the government prior to closeout.
- The designated OA official has prepared a "Notification of Closeout" or "Noncompliance Letter," as appropriate, to send to recipient.

- If recipient was noncompliant, areas of noncompliance have been corrected.
- Unused funds have been de-obligated.
- Grant status has been changed in the GIS system to Closed.

## 2. Equipment Disposition

Subject to certain exceptions title to equipment purchased with project funds vests in the recipient (49 CFR § 18.32(a), and 49 CFR § 19.34(a)). When the recipient no longer needs equipment purchased with project funds, on the original project or other projects sponsored by the OA, the disposition provisions of 49 CFR § 18.32(e) and 49 CFR § 19.33(g) apply.

For federally owned equipment, when it is no longer needed on the project or at project end, the recipient should request disposition instructions from the federal agency 49 CFR §§18.32(f), 19.33(a).

When the recipient requests disposition instructions the OA should first determine whether the equipment can be used on other agency projects. If not, the equipment's availability should be reported to the General Services Administration to determine whether other federal agencies can use it.

If the OA directs the recipient to ship the equipment, the recipient must be compensated for its share of the current fair market value, plus interim storage and shipping costs. If the OA asks the recipient to otherwise dispose of the equipment, the recipient must be compensated for disposition costs.

If a project involves purchasing specialized research equipment that the OA program office wants to reclaim at the end of the project, the OA program office should purchase the equipment itself and furnish it to the recipient as government-furnished property.

## 3. Property Disposition

Real property will be used by the grantee for the originally authorized purposes as long as needed for that purpose. The grantee should not dispose of or encumber its title or other interests.

When real property is no longer needed for the originally authorized purpose, the recipient will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives, as outlined in 49 CFR § 18.31(c) and 49 CFR §19.32(c):

1. Retain title after compensating the OA. The amount paid to the OA will be computed by applying the OA's percentage of participation in the cost of the original purchase to the fair market value of the property.
2. Sell the property and compensate the OA. The amount due to the OA will be calculated by applying the OA's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. When a recipient is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.
3. Transfer title to the OA or to a third-party designated/approved by the OA. The recipient shall be paid an amount calculated by applying its percentage of participation in the purchase of the real property to the current fair market value of the property.

## **F. After the Award**

### **1. Monitoring Use of Property and Equipment after Closeout**

At closeout, most issues related to equipment and real property will be resolved.

Once disposition instructions have been issued and carried out by the recipient, there should be no further obligations by either party related to real property. However, if the recipient still needs the property for the originally authorized purpose or for another federally supported purpose, the government retains its interest until the recipient no longer needs it for any federally supported purpose, at which time disposition instructions should be requested. Until such time, the designated OA official remains responsible for monitoring the recipient's use of the property.

For equipment, the OA is required to issue disposition instructions within 120 calendar days after receiving the final equipment inventory. The inventory should list all equipment acquired under the award as well as all federally owned equipment. Once disposition instructions have been issued and carried out by the recipient, there should be no further obligations by either party related to equipment.

### **2. Reviewing Post-award Audit Reports**

OMB Circular A-133 § .320 requires that recipients have their audits completed within nine months after the end of their fiscal year. It is common for audits to be completed after the end of the project period. If there are audit findings related to the OA project, the designated OA official for the award is still responsible for issuing management decisions on those findings within six months after receiving the audit report, and following up on any required corrective actions. See OMB Circular A-133 § \_\_.400(c)(5).

The management decision must clearly state whether or not the audit finding is sustained; the reasons for the decision; and the expected auditee action to repay disallowed costs, make financial adjustments, or take other action. If the auditee has not completed corrective action, a timetable for follow-up should be given. Prior to issuing the management decision, the designated OA official may request additional information or documentation from the recipient, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs. See OMB Circulars A-133 § \_\_.510(c) and (A-133 § \_\_.405(a),

The management decision should describe any appeal process available to the recipient. Management decisions must include the reference numbers the auditor assigned to each audit finding in accordance with (See OMB Circulars A-133 § \_\_.510(c) and (A-133 § \_\_.405 (e).

# **Chapter 10**

## **Special Issues**

## **A. Travel Costs**

The cost principles for nonprofit organizations, educational institutions, and state, local, and Indian tribal governments state that recipients may follow their own policies regarding travel, which may be based on actual costs, mileage, and/or per diem, as long as they are reasonable and consistent with travel costs they charge for other activities. State, local, and tribal governments should follow the Federal Travel Regulations only if they do not have a written internal policy. Commercial air travel must not exceed coach rates without a compelling reason, which must be documented 2 CFR Part 220, A, J. (53); 2 CFR Part 225, B.(43); 2 CFR Part 230, B. (5).

## **B. Program Income**

49 CFR § 18.25(g)(1) states that for program income, DOT uses the "deductive" alternative for most assistance awards to state and local governments.

49 CFR § 19.24(d) states that the "deductive" alternative is the standard for awards to institutions of higher education, hospitals, and nonprofit organizations, except for research awards, for which the "additive" alternative is the standard.

Program income includes fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Program income generally does not include interest on grant funds, rebates, credits, discounts, or refunds.

Program income is deducted from outlays which may be both Federal and non-Federal, as described below, unless the grant agreement specifies another alternative (or a combination of the alternatives). If the addition cost sharing or matching alternatives are authorized, program income in excess of any limits stipulated shall also be deducted from outlays.

## **C. Pre-award Costs**

A recipient must receive approval to charge pre-award costs to an award. These costs are only permitted in unusual and compelling circumstances and must be approved by the Program Office.

## **D. Interest Earned on Federal Funds**

49 CFR § 18.21(i) requires recipients to remit interest earned (in excess of \$100 per year) on advances of federal funds to the Federal agency at least quarterly, except for those funds which are exempt under the Intergovernmental Cooperative Act and the Indian Self-Determination Act.

In the CFR recipients subject to 49 CFR § 19.22(l) must, remit interest in excess of \$250 per year to their Payment Management System. For instructions contact your program office or payment management contact.

## **E. Administrative Requirements for Other Transactions**

This section provides departmental guidance for implementing Sections 3015, 5102 and 5111 of the Transportation Equity Act for the Twenty-First Century (TEA-21) Program which is related to the use of other transactions. Other transactions are financial assistance or alternative procurement instruments specifically authorized by Congress that are not contracts, grants or cooperative agreements. They are designed to allow government and educational entities, non-profit organizations and private industry to freely transfer funds, materials and technical assistance among themselves for the mutual benefit of all participants. Programs with other transaction authority are not required to use most financial assistance provisions or Federal

Acquisition Regulation clauses, but are free to negotiate provisions that are mutually acceptable to all affected parties.

Section 251 of Public Law 101-189 gave the Defense Advanced Research Projects Agency (DARPA) the first “other transaction” authority in 1989. This allowed DARPA to contract for research and development, unconstrained by most of the regulations governing contracts, grants and cooperative agreements. The research and development authority was expanded to all Defense departments in 1992. Congress subsequently expanded DARPA’s authority to include development and production of prototypes in 1997. Section 226 of Public Law 104-264 gave the Federal Aviation Administration (FAA) authority to use “other transactions”, which has been utilized primarily for procurements. Public Law 101-611 gave the National Aeronautics and Space Administration (NASA) unlimited authority to utilize other transactions. Section 308 of Public Law 104-50 gave DOT the authority to enter into grants, cooperative agreements, and “other transactions” with any entity in execution of the Technology Reinvention Project authorized under the Defense Conversion, Reinvestment and Transition Assistance Act of 1992 and related legislation. This authority has been repeated in every subsequent DOT appropriations act. There are two primary types of other transactions: those used for research and those used for prototypes. “Other transactions” for research are used to support research projects and assistance-type efforts where the goal is to stimulate development and commercialization of new technology. “Other transactions” for prototypes are used to develop and procure prototypes of systems, which will be owned by the government for its direct use. In addition, FAA uses other transactions for acquisition and construction of airport and related facilities which are funded and utilized by two or more separate entities. This distinction is necessitated by the different laws and procedures that applied to "procurement" and "grant" related type actions.

TEA-21 authorized the Department's use of the assistance-type “other transactions” for support of consortia doing research in support of mass transportation (§ 3015) and general surface transportation research (§ 5102). Section 5111 authorized the use of "other agreements" to promote research, development and deployment of transportation technologies related to the Advanced Vehicle Technologies Program. The term, "other agreement" is considered as an "other transaction" for Department program purposes. Authority for the use of other transactions for these three programs are codified at 49 U.S.C. § 5312(b), 23 U.S.C. § 502, and 49 U.S.C. § 5506, respectively.

Each OA and SO with “other transaction” authority shall:

1. Develop program-specific guidance to ensure adequate management of other transactions, including:
  - a. Documenting the justification for selection of an “other transaction” agreement.
  - b. Preparing a justification, whenever competition is not the basis for selection of the award. In this case, competition does not require a formal selection process, but some type of competitive procedure should be used.
  - c. Including provisions in the other transaction agreement which provide for sufficient government program oversight to ensure proper expenditure of public funds.

- d. Consult legal counsel. The use of another transaction does not automatically eliminate the applicability of all procurement or financial assistance laws and regulations. (For example, 49 CFR part 29, Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace Grants) may still apply to assistance type other transactions.)
2. Designate an agreements officer who has authority to approve other transaction agreements, and act as the focal point for amendments or modifications to the agreements. Ensure that the person who executes such agreements has authority to obligate funds on behalf of the government.
3. Report obligations made through these agreements to the Grant Information System and coded as an “other” type of instrument.

## ***F. Assistance Awards with Procurement elements***

A **procurement contract** is the legal instrument used to reflect a relationship between the Federal government and a party when the principal purpose of the transaction is the acquisition by purchase, lease, or barter of property or services for the direct benefit or use of the Federal government, including situations in which the property or services are in turn provided to a third party.

A procurement contract will be awarded and administered in accordance with the provisions of the Federal Acquisition Regulation (FAR), the Transportation Acquisition Regulation (TAR), the Transportation Acquisition Manual (TAM), and other DOT directives covering contracting activities.

A procurement contract should be used when acquiring the following:

- Supplies to meet the day-to-day operating requirements of DOT offices;
- Evaluation (including research of an evaluative nature) of the performance of government programs, projects, or activities initiated by DOT;
- Goods or services for a third party, including those receiving grants or cooperative agreements (for instance, where the National Highway Institute (NHI) contracts for the development of training courses that are provided to State and local government employees and acquired by procurement contract);
- Surveys, studies, and research which provide specific information needed by DOT for its direct activities;
- Consulting or professional services of all kinds if provided to DOT or on behalf of DOT to any third party;
- Conferences conducted on behalf of the government;
- Production of publications or audiovisual materials required primarily in support of the conduct of direct operations of DOT;
- Design or development of items for DOT use or pursuant to DOT definition or specifications; and

- Generation of management information or other data for internal DOT use.

Expenditures under DOT cost reimbursement grants are governed by the Federal cost principles and must conform to DOT policies, grant special provisions and grantee internal policies. Grantees should ensure that costs claimed under DOT grants are necessary, reasonable, allocable, and allowable under the applicable cost principles, DOT policy, and/or the program solicitation. In the event a grantee anticipates charging an item of direct cost that might subsequently be disputed, an authorized official of the grantee organization should discuss the matter with the cognizant DOT Grants and Agreements Officer and document the conditions or factors surrounding the item in order to avoid possible subsequent disallowance.

## **G. Other Considerations**

### **a. Maximum Obligation**

The maximum obligation of DOT for support of the project will not exceed the amount specified in the grant, as amended. DOT does not amend grants to provide additional funds for such purposes as reimbursement for unrecovered indirect costs resulting from the establishment of final negotiated rates or for increases in salaries, fringe benefits and other costs.

### **b. Post-Expiration Costs**

DOT funds may not be expended subsequent to the expiration date of the grant except to liquidate valid commitments that were made on or before the expiration date. For example, commitment of project funds is valid when specialized (research) equipment is ordered well in advance of the expiration date but where, due to unusual or unforeseen circumstances, delivery of such equipment is delayed beyond the expiration date. The costs of equipment ordered after the expiration date, however, may not be charged to the project.

### **c. Prior Approvals**

#### **1. OMB Directive**

DOT has waived most cost related and administrative prior approvals required by OMB Circular A-21 and 2 CFR §215. Grantees should refer to the general conditions referenced in the grant, for information on DOT required prior approvals.

#### **2. Prior Approval Policy**

- (i) The funding of items identified in the budget constitutes DOT's authorization for the grantee to incur these costs, provided there is not a specific limitation in the grant language and the costs are otherwise allowable under the cost principles.
- (ii) Costs not specifically budgeted in a DOT award may be allowable provided that prior approval is not required and costs are incurred consistently with the applicable cost principles.

## **d. Direct Costs**

The following subsections summarize the allowability of frequently encountered direct cost items:

### **1. Salaries, Wages and Fringe Benefits**

#### **a. Salaries and Wages**

(i) All Grantees. All remuneration paid currently or accrued by the organization for employees working on the DOT-supported project during the grant period is allowable to the extent that:

(a) total compensation to individual employees is reasonable for the work performed and conforms to the established policy of the organization consistently applied to both government and non-government activities; and

(b) the charges for work performed directly under DOT grants and for other work allocable as indirect costs are determined and documented as provided in the applicable Federal cost principles.

(ii) Colleges and Universities. Section J.10 of OMB Circular A-21 establishes criteria for compensation for work performed on government projects by faculty members during and outside the academic year.

#### **b. Fringe Benefits**

Fringe benefits are allowable as a direct cost (if not included as an indirect cost) in proportion to the salary charged to the grant, to the extent that such payments are made under formally established and consistently applied organizational policies.

### **2. Equipment**

#### **a. Definitions**

The following definitions, derived from OMB Circular A-21 and 2 CFR §215.2, apply to most DOT grants:

(i) **ACQUISITION COST OF EQUIPMENT** - the net invoice price of the equipment, including the cost of modifications, attachments, accessories or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, should be included in the unit acquisition cost consistent with the grantee's regular accounting practices.

(ii) **EQUIPMENT** - tangible nonexpendable personal property including exempt property charged directly to the grant having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. However, consistent with grantee policy, lower limits may be established

(iii) **GENERAL PURPOSE EQUIPMENT** - permanent equipment (as defined in b., above) that is usable for other than research, medical, scientific or technical activities, whether or not special modifications are needed to make it suitable for a particular purpose. Examples of general purpose equipment include office equipment and furnishings, air conditioning equipment, reproduction and printing equipment, motor vehicles and computer equipment.

(iv) **SPECIAL PURPOSE EQUIPMENT** - permanent equipment (as defined in b., above) which is usable only for research, medical, scientific or technical activities. Examples of special purpose equipment include microscopes, x-ray machines, specialized drilling equipment, spectrometers, and diamond knives.

**b. Special Purpose Equipment**

Expenditures for special purpose equipment are allowable as direct costs provided the acquisition of items with a unit cost of \$5,000 or more is:

- (i) necessary for the research or activity supported by the grant;
- (ii) not otherwise reasonably available and accessible;
- (iii) of the type normally charged as a direct cost to sponsored agreements; and
- (iv) acquired in accordance with organizational practice.

DOT review and approval is required for all equipment purchases by small business or other commercial organizations.

**c. General Purpose Equipment**

Expenditures for general purpose equipment are normally unallowable unless the equipment is primarily or exclusively used in the actual conduct of research. DOT review and approval is required for all equipment purchases by small business or other commercial organizations.

**e. Materials and Supplies**

Materials and supplies are defined as tangible personal property other than equipment, costing less than \$5,000, or other lower threshold consistent with grantee policy. Materials and supplies that are necessary to carry out the project are allowable as prescribed in the governing cost principles.

**f. Travel Costs**

a. Expenses for transportation, lodging, subsistence and related items incurred by project personnel and by outside consultants employed on the project who are on travel status on business related to a DOT -supported project are allowable as prescribed in the governing cost principles.

b. Except as provided in the governing cost principles, the difference between economy airfare and a higher-class airfare is unallowable. A train, bus or other surface carrier may be used in lieu of or as a supplement to air travel at the lowest first-class rate by the transportation facility used. However, if such travel could have been performed by air, the allowance will not normally exceed that for economy airfare.

c. Foreign travel costs of dependents of key project personnel is allowable provided the:

- (i) individual is a key person who is essential to the research on a full-time basis;
- (ii) individual's residence away from home and in a foreign country is for a continuous period of six months or more and is essential to the effective performance of the project; and
- (iii) dependent's travel allowance is consistent with the policies of the organization administering the grant.

d. For restrictions concerning the use of non-U.S. Flag carriers while on foreign travel, refer to the Fly America Act. The **Fly America Act** refers to the provisions enacted by [Title 49 of the United States Code](#), Subtitle VII, Part A, subpart I, Chapter 401, 40118 - Government-Financed Air Transportation.

The Fly America Act is applicable to all travel funded by [United States federal government](#) funds and requires the use of a U.S. [flag carrier](#) airlines with a few exceptions. These individuals include U.S. federal government employees, their [dependants](#), consultants, contractors, grantees, and others.

The Fly America Act is incorporated into the [Federal Acquisition Regulations](#) (FAR) at Subpart 47.4—Air Transportation by U.S.-Flag Carriers and is, therefore, applicable to all U.S. government contracts issued to US and non-US companies.

Interestingly, it should also be noted that, according to the [United States Department of State](#) (Transportation Dept, Aviation), the Fly America Act applies equally to non-U.S. nationals and non-U.S. companies or their representatives both within the U.S. and ex-territorially, regardless of enforcement difficulties or possible infringements of [international law](#) and personal liberty that this could represent.

**g. Computer Services**

The costs of services involving the use of highly complex or specialized facilities operated by the organization, such as computing facilities, are allowable provided the charges meet the conditions of the governing cost principles. Awardees should address lease versus purchase factors as required by 2 CFR §215.44.

**h. Consultant Services ( OMB Circular A-122, Attachment B, Section 39, A-21, Section J, subsection 37 and A-87, Attachment B, Section 32)**

a. Outside Consultants

(i) Grantees normally are expected to utilize the services of their own officers or employees to the maximum extent in managing and performing the activities supported by DOT grants. Where it is necessary for a grantee to enter into a sub-award for the services of persons who are not its officers or employees, it is expected to do so in accordance with written organizational standards which provide for consideration of the factors outlined in the governing cost principles.

(ii) Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill and who are not officers or employees of the performing organization are allowable when reasonable in relation to the services rendered. Payment for consultant services should be comparable to the normal or customary fees charged and received by the consultant for comparable services, especially on non-government contracts and grants.

For all funds awarded prior to March 15, 2006, payment for a consultant's services may not exceed the daily equivalent of the then current maximum rate paid to an Executive Schedule Level IV Federal employee (exclusive of indirect cost, travel, per diem, clerical services, fringe benefits and supplies).

<http://www.opm.gov/oca/08tables/pdf/ex.pdf>

(iii) In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors, among others, are relevant:

- (a) the nature and scope of the service rendered in relation to the service required;
- (b) the necessity of issuing a sub-award for the service considering the organization's capability in the particular area;
- (c) the past pattern of such costs, particularly in the years prior to the award of government contracts and grants;
- (d) the impact of government contracts and grants on the organization's total activity (e.g., what new problems have arisen);
- (e) whether the proportion of government work to the organization's total activity is such as to influence the organization in favor of incurring the cost, particularly where

- the services rendered are not of a continuing nature and have little relationship to work under government contracts and grants;
- (f) whether the service can be performed more economically by employment rather than by consulting;
  - (g) the qualifications of the individual or concern rendering the service and the normal/customary fees charged and received by the individual for comparable services, especially on non-government contracts and grants; and
  - (h) adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation and termination provisions).
- (iv) In addition, retainer fees to be allowable must be supported by evidence of bona fide services available or rendered.
- (v) Costs of legal, accounting and consulting services and related costs incurred in connection with organization and reorganization, defense of antitrust suits and the prosecution of claims against the government are unallowable. Costs of legal, accounting and consulting services and related costs incurred in connection with patent infringement litigation are unallowable unless otherwise provided for in the grant.
- (vi) Grantees may hire consultants not identified in the grant proposal or award, provided:
- (a) it is in accordance with written organizational standards;
  - (b) grant funds are reallocated in accordance with the grantee's policies which are consistent with the governing cost principles; and
  - (c) it is within the limits of the grant funding.

#### b. Intra-University Consulting

Intra-university consulting is assumed to be undertaken as a university obligation requiring no compensation, in addition to the Project Director's full-time salary, and to those who function as consultants or otherwise contribute to a project conducted by another faculty member of the same institution will not incur costs under the grant. However, in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the consultant is in addition to his/her regular appointment, any charges for such work representing extra compensation above the salary are allowable if consistent with established university policy and the applicable cost principles.

#### c. Federal Employees

Employees of the Federal government (other than DOT) may be utilized as lecturers or staff members on a project and may receive compensation and/or expenses if they obtain prior approval from their agencies to participate, and if services to the project are performed outside their regular working hours or while they are on leave status from official duties. Under no circumstances may DOT employees receive compensation from a DOT-supported project.

## Appendix I: Definitions

The following are definitions of terms most commonly used in the award and administration of DOT grants:

1. **Applicant** -- A government, or public or private (including for-profit) organization, or other legal entity which submits a completed application requesting Federal assistance.
2. **Assistance** -- The transfer of a thing of value to carry out a public purpose of support or stimulation authorized by a law of the United States.
3. **Assistance Awards** -- Awards that entail the transfer of money, property, services, or other things of value from the Federal government to a State or local government or other recipient to accomplish a public purpose of support or stimulation. DOT is authorized to use grants or cooperative agreements for this purpose.
4. **Budget** -- The financial expenditure plan approved by DOT to carry out the purpose(s) of the grant-supported project. The budget is comprised of both the Federal share and any non-Federal share identified on the Notice of Grant Award. The term grant budget means the financial expenditure plan approved by DOT for the use of Federal funds only.
5. **Budget Period** -- The interval of time (usually 12 months) into which the project period is divided for funding and reporting purposes.
6. **Catalog of Federal Domestic Assistance (CFDA)** -- Online database of all Federal programs; provides information on Federal grants/cooperative agreements and deals with all types of assistance.
7. **Contract** -- A legal instrument reflecting a relationship between the United States Government and a recipient when: 1) the principal purpose of the instrument is to acquire (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government; or 2) the agency decides in a specific instance that the use of a procurement contract is appropriate.
8. **Cooperative Agreement** -- A legal instrument reflecting a relationship between the United States Government and a State, a local government, or other recipient when: 1) the principal purpose of the relationship is to provide assistance to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government; and 2) substantial involvement is expected between the executive agency and the recipient when carrying out the activity contemplated in the agreement.
9. **Discretionary Grant** -- A grant that permits the Federal Government, according to specific authorizing legislation, to exercise judgment ("discretion") in selecting the project, grantee/recipient organization and the amount of the award, through a competitive grant process. Types of activities commonly supported by discretionary grants include demonstration, research, training, service, and construction projects or programs. Discretionary grants are sometimes referred to as "project grants."
10. **Executive Orders (E.O.)** -- Documents issued by the President under the authority of that Office. They have legal effect if issued as part of a legislative mandate. Otherwise, they are an internal directive within the Executive Branch.
11. **Federal Acquisition Regulation (FAR)** -- A part of the Federal Acquisition Regulations System. The Federal Acquisition Regulations System is established to codify uniform policies for acquisition of supplies and services by executive agencies. The Federal

12. Acquisition Regulations Systems consists of the FAR as its primary document, and agency acquisition regulations that implement or supplement the FAR.
13. **Federal Assistance Award Data System (FAADS)** -- A system maintained by the Census Bureau and is a collection of selected computer-based data on Federal financial assistance award transactions, compiled quarterly.
14. **Federal Funding Accountability and Transparency Act (FFATA)** -- This Act directed the Office of Management and Budget (OMB) to make a publicly available, searchable website containing information about entities that were awarded (grants, cooperative agreements, sub-grant awards, loans, contracts, subcontracts, and other forms of Federal assistance).
15. **Federal Grant and Cooperative Agreement of 1977** --This Act was designed to eliminate some of the confusion over the application of assistance versus acquisition instruments and to end abuses associated with their use. The Act characterized relationships and established government-wide criteria for the selection of appropriate legal instruments.
16. **Federal Register** --Published by the Office of Federal Register, National Archives and Records Administration (NARA), the Federal Register is the official daily publication for rules, proposed rules, and notices of Federal agencies and organizations, as well as Executive Orders and other Presidential documents.
17. **Grant** -- A type of assistance award and a legal instrument reflecting a relationship between the United States Government and a State, a local government, or other recipient when: 1) the principal purpose of the relationship is to provide assistance to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government; and 2) substantial involvement is **not** expected between the executive agency and the recipient when carrying out the activity contemplated in the agreement.
18. **Grant Information System (GIS)** -- A system for the storage, retrieval, analysis, display, and maintenance of grant information.
19. **Grantee** -- The organization or other entity that receives a grant and assumes legal and financial responsibility and accountability both for the awarded funds and for the performance of the grant-supported activity.
20. **Grants.gov** -- A single comprehensive website containing information about finding and applying for Federal grant/cooperative agreement programs.
21. **Grants.gov Synopsis** -- A summary document formatted for the Grants.gov website, usually in the form of a grant/cooperative agreement award, which is used to inform the public of an opportunity for Federal assistance.
22. **Grants Officer** -- The individual whose signature authorizes the obligation of Federal funds to the grantee, and who is responsible for overseeing the grantee's actions to ensure that Federal funds expended for the grant/cooperative agreement are spent consistent with the terms and conditions of the grant/cooperative agreement.
23. **Mandatory Grant** --A grant that a Federal agency is required by statute to award if the recipient (usually a State) submits an acceptable State Plan or application and meets the eligibility and compliance requirements of the statutory and regulatory provisions of the grant program. Mandatory grants include open-ended entitlement grants, closed-ended

- grants, and block grants. In the past, mandatory grants were sometimes referred to as "formula grants."
24. ***New Grant*** -- The initial grant made in support of a project or program.
  25. ***Notice of Grant Award*** -- Official grant document used in discretionary grant programs that (1) notifies the grantee and others of the award of a grant, and (2) contains or references all the terms and conditions of the grant.
  26. ***Operating Administrations (OA)*** -- There are eleven Operating Administrations within DOT which includes OST, FAA, FHWA, FMCSA, FRA, FTA, MARAD, NHTSA, PHMSA, RITA and SLSDC. They are sometimes referring to as "Modes."
  27. ***Prior Approval*** --Written permission provided by an authorized official in advance of an act that would result in either (1) the obligation or expenditure of funds or (2) the performance or modification of an activity under the grant-supported project where such approval is required. Prior approval must be obtained from the designated Grants Management Officer for the grant involved. Documentation of the approved budget on the Notice of Grant Award constitutes prior approval. Prior approval applies for the performance of activities and expenditure of funds as described in the grant application, unless otherwise restricted by the terms and conditions of the grant award.
  28. ***Program Announcement*** --A document produced by the agency for applicants, which contains a programmatic description of a funding opportunity. This document also contains information about applicant eligibility, evaluation criteria, instructions on how to apply, permissible activities, as well as program requirements and restrictions, information about funding duration, applicable funding/match requirements. A link to this document is usually part of the Grants.gov synopsis posted to the Grants.gov web site by agencies. In addition, it may be posted to the website of the awarding agency and, in some cases; it is posted in the Federal Register. This document is also known as program solicitation, program guidance document, and notice of funding availability.
  29. ***Program Office*** -- An office within an agency responsible for implementing projects that are carried out consistently and successfully in accordance with agency authorizing statutes and strategic plans.
  30. ***Project*** -- The identified activity approved by DOT for support.
  31. ***Project Costs*** -- Those costs, direct and indirect, incurred to carry out an approved grant-supported project. Only project costs incurred during the budget period indicated on the Notice of Grant Award are allowable unless specific approval to include other costs is given by DOT.
  32. ***Project Period*** -- The total time for which the recipient's project is approved for support, including any extensions. A project period may consist of one or more budget periods and can be extended by a renewal award which adds one or more budget periods.
  33. ***Recipient***-- The grantee or sub-grantee (excluding contractors); the awardee of Federal funds under an assistance agreement.
  34. ***Sub-award*** -- An award of financial assistance in the form of money made under an award by a recipient to an eligible sub-recipient or by a sub-recipient to a lower tier sub-recipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services.
  35. ***Sub-grant*** -- An award of financial assistance in the form of money or property in lieu of money, made under a grant by a grantee to an eligible sub-grantee. The term includes

36. financial assistance when provided by contract, but does not include procurement nor any form of assistance which is excluded from the definition of "grant."
37. ***Sub-grantee*** -- The government, or public or private (including for-profit) organization or other legal entity to which a sub-grant is awarded and which is accountable to the grantee for the use of funds provided.
38. ***Terms and Conditions***-- Requirements mandated in a grant/cooperative agreement or contract award that contains government-wide and agency/program-specific legally binding requirements with which the grant/cooperative agreement recipient agrees to comply, as a condition of receiving Federal funds.

## **Appendix II: Operating Administrations Financial Web-sites**

The web sites below refers you to general administrative information of the specific OA

### **1. Office of the Secretary of Transportation (OST)**

[http://www.dot.gov/ost/m60/Financial Assistance Management Home](http://www.dot.gov/ost/m60/Financial_Assistance_Management_Home)

### **2. Federal Aviation Administration (FAA)**

<http://www.faa.gov>

### **3. Federal Highway Administration (FHWA)**

<http://www.fhwa.dot.gov/programs>

<http://www.fhwa.dot.gov/doingbiz>

[http://www.fhwa.dot.gov/aaa/forms2.](http://www.fhwa.dot.gov/aaa/forms2)

### **4. Federal Motor Carrier Safety Administration (FMCSA)**

<http://www.fmcsa.dot.gov/about/what-we-do/keyprograms/keyprograms>

### **5. Federal Railroad Administration (FRA)**

<http://www.fra.dot.gov/us/content/34>

### **6. Federal Transit Administration (FTA)**

[http://www.fta.dot.gov/grants\\_financing](http://www.fta.dot.gov/grants_financing)

### **7. National Highway Traffic Safety Administration (NHTSA)**

<http://www.nhtsa.dot.gov/portal/site/nhtsa/menuitem.c5f2b2d02df83a9d304a4c4446108a>

### **8. Pipeline and Hazardous Materials Safety Administration (PHMSA)**

<http://www.phmsa.dot.gov/doing-biz/grants>

### **9. Research and Innovative Technology Administration (RITA)**

<http://www.ott.nih.gov/CRADAs>